

ITEMS FOR CONSIDERATION

***IN PREPARATION OF THE FAIRFAX COUNTY LEGISLATIVE PROGRAM
2018 VIRGINIA GENERAL ASSEMBLY***

October 17, 2017

INDEX

ITEMS FOR INITIAL CONSIDERATION

Environment – Funding for the Development and Maintenance of Park Infrastructure	2
Land Use – Minor Modifications to Special Exception Conditions	4
Human Services – Transportation Network Companies and Accessibility	6
Human Services – Serving a Petition on a Non-Petitioning Parent Prior to a Minor’s Involuntary Commitment	9
Human Services – Funding for Mandated Behavioral Health Services	12

ENVIRONMENT – FUNDING FOR THE DEVELOPMENT AND MAINTENANCE OF PARK INFRASTRUCTURE

PROPOSAL:

Support legislation that provides additional funding for state and local governments to develop and maintain park infrastructure.

SOURCE:

Fairfax County Park Authority

July 26, 2017

BACKGROUND:

The Virginia Department of Conservation and Recreation's (DCR) 2011 Virginia Outdoors Survey (VOS) found that walking for pleasure was the top outdoor activity in the Commonwealth. Similarly, the 2016 Fairfax County Park Authority (FCPA) Needs Assessment found that paved walking and biking trails were the most needed park or facility type in the County, with 84% of survey respondents indicating a need, and 21% indicating a high unmet need, for such trails. Additionally, 87% of respondents said they had been biking, hiking, or walking in the past twelve months, and 87% of respondents supported the expansion or renovation of walking and biking trails and the connection of existing trails.

However, funding for trail development and rehabilitation, as well as other park infrastructure, is limited. In their 2016 and 2017 reports to the General Assembly, "Current and Future Plans for a State System of Attractive, Sustainable, and Enduring Trails Across the Commonwealth," DCR and the Statewide Trails Advisory Committee (STAC) noted that there is limited funding available for the maintenance and development of trails. STAC met in April 2017, and identified other challenges facing recreational trail development, including a difficult grant process. STAC recommended that it should advocate for state funding, staff support, and a statewide non-profit advocacy organization in order to further grow the statewide trails network. Additionally, STAC made a number of recommendations on ways to improve trails in the Commonwealth, including: obtaining funding for a statewide trails needs assessment showing costs; seeking funding sources for renovation and maintenance of trails; and, obtaining funding for a statewide study on the economic and other benefits of trails. These recommendations will be considered in the development of DCR's 2018 Virginia Outdoors Plan.

Currently, the main source of grant funding for primarily recreational trail development in Virginia is the Recreational Trails Program (RTP). RTP is a matching reimbursement program funded through the Federal Highway Administration and administered by DCR. Project applicants, such as local governments or non-profit organizations partnering with local governments, must provide a minimum 20% match for the total cost of the project.

The cost for the design of the project and the construction administration are not generally considered reimbursable. The matching share may include federal funds other than RTP funding; however, federal funds may not exceed 95% of total project costs. RTP funding may be used for trail rehabilitation; trail construction; development of features that facilitate access to, and use of, trails by people with disabilities; and, development of motorized trails (except on trails that were limited to non-motorized uses prior to May 1, 1991). Applications for RTP funding are classified as rehabilitation/maintenance projects, new construction projects, or combination projects. Projects classified as “rehabilitation/maintenance” involve the renovation and improvement of existing trail corridors and/or trailheads, especially those deteriorated by intensive use, or affected by storm damage.

FCPA has applied for and received RTP grants, for projects including trail paving, signage and bridge construction. However, other projects remain unfunded due to the limited grant opportunities available through this program. In 2016, funding award request amounts were limited to a minimum of \$100,000, and no more than \$300,000; and four to six grant awards were expected statewide.

RECOMMENDATION:

Recommend adding language in support of increased funding for park infrastructure projects to the existing Land Conservation position statement in the 2018 GA Legislative Program.

Land Conservation

Support the conservation of open space, which protects vital ecological resources and the environment, provides recreational opportunities, and improves the quality of life.

Fairfax County has long supported the goals set by recent Virginia Governors to preserve open space and protect “Virginia Treasures” (properties with particular conservation value, such as wetlands or riparian buffers). The County also supports state incentives that promote donations to park authorities or associated foundations, the prioritization of the Virginia Land Preservation Tax Credit to encourage the preservation of land for public use, and increased funding for the development and rehabilitation of park infrastructure, including trails, shelters, and fields. In addition to other benefits, the preservation of open space contributes to watershed protection, an important issue as the state works to reduce nutrient pollution in the Chesapeake Bay. *(Updates and reaffirms previous position.)*

LAND USE – MINOR MODIFICATIONS TO SPECIAL EXCEPTION CONDITIONS

PROPOSAL:

Initiate legislation to allow local governments to consider limited special exception amendment applications through an administrative process.

SOURCE:

Board of Supervisors Development Process Committee
May 23, 2017

BACKGROUND:

Under current state law and the County's Zoning Ordinance, the Zoning Administrator has limited authority to administratively approve certain minor modifications to special exception conditions and proffer conditions. Because the modifications are minor – they must substantially conform to the approved conditions – such administrative approvals do not require separate approval by the local governing body or planning commission.

Under separate state law, localities may consider limited proffer condition amendment applications without a public hearing only if the amendment “does not affect conditions of use or density.” As part of the County's efforts to modernize its Zoning Ordinance (called “zMOD”), the Board is scheduled to consider a Zoning Ordinance amendment for “minor variations” to approved proffers. If the amendment is adopted, minor variations of proffers would be limited, specific requests, which would be acted upon by the Board.

Discussion on this proposal at the Board's Development Process Committee raised a question about a streamlined process for changes to special exceptions that are also targeted and specific, but not minor enough to be approved administratively. The Board asked staff to consider options under existing law, and whether legislation is necessary to allow local governments to streamline limited special exception amendment applications, similar to the law regarding minor variations of proffers.

Under existing law and as part of the County's Fairfax First Initiative, the Department of Planning and Zoning recently formalized a process to expedite consideration of zoning amendment applications of limited scope. These “Single Issue Zoning Amendment applications” are available for any application type, including special exceptions, and streamline the application request and staff review. While they depend on applicant cooperation in this expedited procedure, there should be a significant reduction in the time between application acceptance and public hearings.

RECOMMENDATION:

Do not recommend pursuing legislation for additional special exception authority at this time. Instead, direct staff to continue efforts to improve local processes within existing authority, while monitoring for areas where the County may need additional local authority to further improve the zoning process. If additional authority is needed, the Legislative Committee can revisit this issue for a future General Assembly session.

HUMAN SERVICES – TRANSPORTATION NETWORK COMPANIES AND ACCESSIBILITY**PROPOSAL:**

Add a position to the Human Services Issue Paper in support of requiring Transportation Network Companies (TNCs) to provide service to people with all types of disabilities, including people who use wheelchairs.

SOURCE:

Fairfax Area Disability Services Board
July 2017

BACKGROUND:

The Legislative Committee considered a very similar proposal last year. As Board members may recall, Transportation Network Companies (TNCs) dispatch ride requests through smartphone apps to individuals who use their personal vehicles to transport customers. The two companies currently authorized to provide this service in Virginia are Uber and Lyft. The regulatory structure for TNCs was established by the 2015 General Assembly (GA) (HB 1662/SB 1025), and provides a process for the licensing of TNCs and TNC partners (drivers). The 2015 legislation also included a requirement that TNC drivers register their personal vehicle with the Department of Motor Vehicles (DMV) for use as a TNC vehicle, but this requirement was repealed by the 2017 GA (HB 2019/SB 1366). As a result, vehicles used for TNC purposes no longer need to be registered with the DMV for use as a TNC vehicle and no longer need to display an identification marker issued by the DMV (displaying the TNC trade dress is still required). In addition, the DMV is currently conducting a study of passenger carriers; current concepts under consideration would not make significant changes to TNC regulations, and accessibility has not been a focus of the study.

Virginia Code does not require TNCs or TNC drivers to provide wheelchair-accessible services, but does require that TNCs provide passengers an opportunity to indicate whether such services are required. If the TNC cannot arrange for wheelchair-accessible service with a TNC driver, then it must direct the passengers to an alternative provider of wheelchair-accessible services (such as taxicab or paratransit companies), if available. The 2015 TNC legislation also requires that the DMV periodically consult with local governments to determine whether TNCs have had an effect on the availability of wheelchair-accessible transportation services. If evidence suggests an effect, the DMV must work collaboratively with appropriate stakeholders to develop recommendations to be submitted to the Chairmen of the House and Senate Committees on Transportation. Thus far, Fairfax County Department of Cable and Consumer Services and Department of Transportation staff have not been contacted by DMV to assess these impacts in Fairfax County.

TNCs present an opportunity to increase the availability and flexibility of transportation services, potentially addressing transportation barriers for some County residents. In some instances, TNCs also may be more affordable than taxis, depending on a number of factors. Yet, passengers who need wheelchair-accessible services often are limited to taxis and unable to utilize TNCs. In the 2016 Enhanced Mobility Survey conducted by the Fairfax County Department of Neighborhood and Community Services, nearly half of the survey respondents encouraged County staff to focus on improving the availability of accessible and affordable transportation, and one in five survey respondents encouraged County staff to work with TNCs to expand transportation options for older adults and individuals with disabilities.

Efforts are underway to explore the use of TNCs to supplement traditional transportation services. As discussed during the Board's 50+ Committee meeting on September 19, 2017, Fairfax County staff are exploring the feasibility and legal implications of partnering with TNCs to supplement County services. The proposed pilot project (which would incorporate TNCs into the County's Taxi Voucher Program) would need to comply with the Americans with Disabilities Act (ADA) and provide wheelchair-accessible services to program participants. The pilot program would serve some, but not all, of the wheelchair users in the County, as program participation is based on eligibility criteria which takes into consideration type of disability, income, and age. Outside of Virginia, in some cities TNCs are providing financial incentives to TNC drivers to increase the availability of TNC wheelchair-accessible rides. For example, in Philadelphia, a TNC subsidizes the cost of wheelchair-accessible vehicle leases, so that the cost is about the same as the cost of sedan leases, and provides a \$10 bonus each time a driver picks up a person who uses a wheelchair. In Chicago, a TNC offers a financial bonus and subsidy for wheelchair-accessible vehicle leases to TNC drivers.

Although County staff have observed an increasing demand from people with disabilities for equal access to TNC services, the DMV has not received any formal complaints from the public regarding wheelchair accessibility to date, according to the DMV's FY 2017 Fourth Quarter report, despite Fairfax County staff's outreach efforts (directed by the Board's Legislative Committee last fall) to educate individuals on how to submit complaints to the DMV. However, the DMV has been notified by the Virginia Association of Centers for Independent Living (VACIL), a statewide organization that provided input on the 2015 TNC legislation, that "people with physical disabilities continue to be frustrated by the lack of accessible vehicles for rides with the TNCs" (VACIL did note that individuals with visual disabilities and those with development disabilities have successfully used TNCs). However, VACIL also expressed concern that potential partnerships between local transit authorities and TNCs for the provision of paratransit services might result in a decline in available taxi service, or misrepresentation to paratransit customers regarding the transit authority's obligation to provide paratransit services in accordance with the ADA. At the national level, the U.S. Department of Justice reports receiving complaints from people with disabilities (complaint data is not publicly released so specific numbers are not available).

RECOMMENDATION:

Direct staff to continue working with interested stakeholders to educate consumers about how to provide feedback to the DMV regarding TNC accessibility issues. Additionally, last year the Legislative Committee directed staff to revise the Accessibility position in the Legislative Program and Human Services Issue Paper to include transportation and transportation network companies. Direct staff to further emphasize this issue in the Accessibility position by adding the below language highlighted in yellow.

Accessibility

Support ensuring the inclusion of people with disabilities throughout the Commonwealth by increasing accessibility to public places, housing, and transportation services (including transportation network companies).

Over 75,000 working-age Fairfax County residents have a disability, which includes people with hearing, vision, cognitive, ambulatory, self-care, and/or independent living disabilities. While significant progress has been made toward ensuring the equality and inclusion of people with disabilities since the passage of the Americans with Disabilities Act (ADA) more than 27 years ago, continued advancement is needed. Fairfax County supports access for people with disabilities and older adults in public and private facilities; in particular, by increasing accessibility through incentives, voluntary standards for accessible housing, and educational outreach to businesses, building officials, medical providers, advocacy groups, and state and local governments.

The lack of affordable, accessible, integrated housing is a major barrier facing older adults and people with disabilities. Innovative options include increasing the accessible housing stock in newly constructed multi-family housing (encompassing apartment buildings, condos, and assisted living housing among others); encouraging builders to offer “visitable” or Universally Designed options for new single family homes as an alternative to conventional design; raising the maximum annual allotment of the Livable Homes Tax Credit; and, establishing a comparable grant to help pay for much-needed home modifications. Incentives and initiatives for accessible housing and home modifications should benefit both homeowners and renters. **Additionally, transportation network companies have the potential to reduce transportation barriers for individuals with disabilities and older adults, and innovative approaches should be considered for the provision of wheelchair-accessible services.** Improved accessibility in public buildings, housing, transportation, medical facilities and employment benefits all Virginians, by allowing people with disabilities to remain active, contributing members of their communities, while retaining their independence and proximity to family and friends. *(Updates and reaffirms previous position.)*

HUMAN SERVICES – SERVING A PETITION ON A NON-PETITIONING PARENT PRIOR TO A MINOR’S INVOLUNTARY COMMITMENT**PROPOSAL:**

Support two changes to Virginia Code § 16.1-341(B) pertaining to serving the petition and notice of the hearing upon non-petitioning parent(s) for the involuntary commitment of minors. The first change (hereinafter Proposal A) would require that a “reasonable effort” be made to serve the non-petitioning parent(s), instead of requiring completed service, so that the inability to serve the non-petitioning parent(s) would not result in dismissal of the petition. The second change (hereinafter Proposal B) would allow any law enforcement officer to serve the petition on the non-petitioning parent(s) in order to make it more likely that the petition could be served within the 96-hour time limit prior to the hearing – currently only sheriffs can serve the petition.

SOURCE:

Fairfax-Falls Church Community Services Board (CSB)
July 28, 2017

BACKGROUND:

When a minor 14 years or older is experiencing a psychiatric crisis and needs mental health treatment in a hospital setting but refuses such treatment, an adult can petition the Juvenile and Domestic Relations Court (JDRC) for the involuntary civil commitment of the minor (it is important to note that the consent of one parent is sufficient to hospitalize minors under 14 for mental health treatment – a minor under 14 does not need to consent). Any responsible adult (such as a parent, physician, school official, foster care parent, person having custody over a minor in detention or shelter care, a CSB staff member, or a Department of Family Services official) can initiate this petition.

The commitment hearing is statutorily required to be held no sooner than 24 hours and no later than 96 hours from the later of the time the petition was filed or the temporary detention order was issued. The JDRC appoints an attorney to represent the minor subject to the petition, and a guardian ad litem to report to the court on what is in the minor’s best interest. In addition, in Fairfax County, if the petition was filed through the Fairfax-Falls Church CSB, an attorney from the Office of the County Attorney represents the CSB and the petitioners (this service is not provided by other jurisdictions in the state). Special justices (who are appointed by the chief judge of each judicial circuit) adjudicate these commitment hearings, which are typically held in jurisdictions with a psychiatric facility licensed to accept juveniles (juveniles subject to a temporary detention order from other jurisdictions are transported to and detained at one of the few such facilities in Virginia). Because one of these facilities is in Fairfax County, the special justices in Fairfax County adjudicate commitment hearings for minors detained at the Fairfax facility, regardless of whether the minor’s permanent residence is in Fairfax County or another jurisdiction in Virginia.

Pursuant to Virginia Code § 16.1-341(B), a copy of the petition and notice of the commitment hearing “shall be served immediately upon the minor and the minor’s parents, if they are not petitioners, by the sheriffs of the jurisdiction in which the minor and his parents are located.” This requires that process be served on both parents; other kinds of petitions filed in JDRC require service of process on at least one parent, instead of both parents.

In some cases involving the involuntary commitment of minors, the circumstances of the non-petitioning parent(s) make it impossible to serve process within the required timeframe. Such circumstances include: lack of a correct address for the non-petitioning parent(s) (due to homelessness, no fixed address, or an inaccurate address on file); the unknown identity of the child’s biological father; the non-petitioning parent(s) being out of the County (whether living or traveling to another part of Virginia, the U.S., or overseas, due to military deployment or other circumstances); the non-petitioning parent(s) being incarcerated outside of Virginia; and, a parent who is absent from the child’s life but whose rights have not been terminated. It can be particularly challenging to serve process on a non-petitioning parent who resides outside of the County within the required 96-hour timeframe (other civil matters requiring service of process outside the County typically do not include such tight timelines). Non-petitioning parents who refused to disclose their residential address or do not make themselves available for service also present a challenge.

If the non-petitioning parent(s) have not been served, the attorney representing the minor can request that the petition be dismissed, and in Fairfax County the special justices typically grant the dismissal. Following the dismissal of a petition, the minor can no longer be held at the hospital against his or her wishes. Staff estimate that the number of such petitions dismissed in FY 2016 and FY 2017 due to lack of service in Fairfax County is about 15 percent (approximately 18 out of 114 petitions); each dismissed petition could potentially result in the minor inflicting harm on himself/herself and/or others.

RECOMMENDATION:

Regarding Proposal A, direct staff to gather additional information about this proposal by speaking with the Virginia Association of Counties, the Virginia Association of Community Services Boards, and others, and report back to the Board’s Legislative Committee.

Regarding Proposal B, do not recommend support for allowing police departments, in addition to the sheriff, to serve process for the involuntary commitment of minors. In order to implement such a change, the Fairfax County Police Department would have to train officers on how to serve process and dedicate officers to do so, which would require significant resources. It would also duplicate the existing work of the Fairfax County Sheriff’s Office, which has a civil enforcement branch (comprised of 28 staff members, including 23 sworn deputy sheriffs) to serve and enforce civil law, and established systems in place to do so. Further, authorizing police departments to serve process in these cases would apply to jurisdictions throughout the Commonwealth, which may raise concerns in other jurisdictions.

October 17, 2017

Additionally, at times the service of civil process on individuals who are overseas or stationed in the U.S. for military or other federal purposes has been a challenge. Direct staff to explore opportunities for enhanced collaboration with the federal government to address this issue.

HUMAN SERVICES – FUNDING FOR MANDATED BEHAVIORAL HEALTH SERVICES**PROPOSAL:**

Replace the existing Mental Health position statement in the 2018 General Assembly (GA) Human Services Issue Paper with new language in support of additional state funding to implement the services required by the Commonwealth's behavioral health system transformation plan (System Transformation, Excellence, and Performance in Virginia (STEP-VA)).

SOURCE:

Fairfax-Falls Church Community Services Board (CSB)
July 27, 2017

BACKGROUND:

The 2017 GA enacted legislation (HB 1549 (Farrell)/SB 1005 (Hanger/Deeds)) that requires the state's behavioral health authorities, including 39 Community Services Boards (CSBs), to provide additional core services, as described in the Commonwealth's behavioral health system transformation plan, STEP-VA. The County supported the 2017 legislation, provided that the state appropriate sufficient funding for implementation. Staff estimate that it would cost \$2.5 million annually for the Fairfax-Falls Church CSB to provide same-day access – while the CSB is working toward meeting this standard, it does not have sufficient funding or staffing. Due to budget constraints, additional mandates included in the introduced legislation were removed from the final bills that passed the GA. The GA also acknowledged that funding for same-day screening was not included in the state budget, and therefore, provided a delayed effective date – July 1, 2019, for the first phase, and July 1, 2021, for the second phase.

The STEP-VA plan includes eleven services, which are taken directly from the federal Substance Abuse Mental Health Services Administration's (SAMHSA) Certified Community Behavioral Healthcare Clinic structure – the goal of the plan is to transition from institutional care to community-based care. Currently, all CSBs provide emergency services. When the first phase of the 2017 legislation takes effect on July 1, 2019, CSBs will also be required to provide:

- Same-day access to mental health screening services; and,
- Outpatient primary care screening, monitoring, and follow-up for individuals who need help to access primary health services.

The 2017 GA included funding for 18 CSBs to provide same-day access to mental health screening services (the budget amendment providing this funding did not specify which CSBs would be included, but staff has now learned that the Fairfax-Falls Church CSB was not included). A small amount of funding for the remaining 22 CSBs may be included in the Governor's 2018-2020 biennium budget, which will be released in December 2017.

When the second phase of the 2017 legislation takes effect on July 1, 2021, CSBs will be required to provide the following additional services:

- Outpatient mental health and substance abuse services, including medication assisted treatment (MAT);
- Detoxification;
- Psychiatric rehabilitation;
- Care coordination services and case management services;
- Peer support and family support services;
- Targeted case management;
- Mental health services for members of the armed forces located 50 miles or more from a military treatment facility, and veterans located 40 miles or more from a Veterans Health Administration medical facility;
- Person centered treatment; and,
- Mobile Crisis Services for individuals with mental health or substance use disorders.

At their September 28, 2017, meeting, some members of the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century expressed concerns that the timeline for implementing the remaining STEP-VA services may be too aggressive. No funding for these additional mandates has been appropriated.

RECOMMENDATION:

Update the existing Mental Health position statement in the 2018 GA Human Services Issue Paper with new language in support of increased state funding for the implementation of STEP-VA.