

ITEMS FOR CONSIDERATION
IN PREPARATION OF THE FAIRFAX COUNTY LEGISLATIVE PROGRAM
2019 VIRGINIA GENERAL ASSEMBLY

October 2, 2018

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ITEMS FOR INITIAL CONSIDERATION

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ENVIRONMENT – SOLAR FREEDOM

PROPOSAL:

Add a position to the Legislative Program in support of legislation to eliminate barriers that impede the ability of local governments, businesses, and residents to install or purchase solar power for their own use.

SOURCE:

Environmental Quality Advisory Council (EQAC)
July 24, 2018 and August 9, 2018

Fairfax County Board of Supervisors
September 25, 2018

BACKGROUND:

Fairfax County's Environmental Agenda describes environmental stewardship as both a key responsibility and a critical legacy, and essential elements include the efficient and prudent use of energy resources, the promotion of energy conservation, and support for alternative energy sources. Renewable energy projects can be expensive, creating a financial barrier that has garnered attention in many General Assembly (GA) sessions, as various legislative solutions have been considered in recent years.

In advance of the 2019 GA session, a renewed effort is underway to remove legislative impediments to solar energy use by local government, businesses, and residents (the initiative is referred to as Solar Freedom). One area of particular focus is the use of net metering. Under such a program, a utility measures the difference between electricity supplied to the customer and electricity fed back from the customer to the electrical grid. If the customer has generated more power than he or she has consumed, the utility compensates the customer for the excess power at a rate approved by the State Corporation Commission (unless the parties agree to a higher rate). Currently, there are significant restrictions that pose challenges to municipalities' use of solar energy through net metering programs.

Another legislative barrier to use of renewable energy pertains to restrictions on third-party power purchase agreements (PPAs), which make renewable energy projects more affordable by enabling customers to obtain use of the necessary equipment without up-front capital expenditures. Following objections from Dominion Energy Virginia indicating that PPAs violate its monopoly on the sale of electricity within its territory, legislation passed by the 2013 GA established a limited pilot program for PPAs, allowing customers in areas served by Dominion to install solar or wind using PPAs. However, except in very limited circumstances, renewable energy companies may be subject to regulation as a public utility company, and the regulatory issues, in combination with restrictions on the

amount of energy that PPAs can generate and where it can be used by the customer, make it difficult for renewable energy companies to benefit from participation in a PPA.

Some of the items being considered in the Solar Freedom package include provisions to:

- Allow local governments to install solar facilities of up to 5 megawatts (MW) on government-owned property and use the electricity for non-contiguous municipal buildings;
- Allow customers to attribute output from a single solar array to multiple meters on the same or adjacent property of the same customer;
- Remove the restriction on customers installing a net-metered solar facility larger than required to meet their previous 12 months of demand;
- Raise the size cap for net-metered non-residential solar facilities from 1MW to 2MW;
- Lift the one percent cap on the total amount of solar power generation that can be net metered in a utility's territory;
- Clarify that third-party financing using PPAs is legal in all utility territories across the state – not just within Dominion's territory – and is authorized for all customer classes;
- Authorize a multi-family residential building owner to install a solar facility on the building or surrounding property and sell the electricity to tenants; and,
- Remove standby charges on residential facilities sized between 10 to 20 kilowatts (kW).

EQAC proposes that the entire reform package, its individual elements, or legislation that accomplishes similar goals be supported. Discussions on these topics are underway with various stakeholders, including the Virginia Association of Counties, the Virginia Municipal League, other localities, state and local environmental groups, trade organizations, and non-profits.

Such legislation could make it easier and more economically feasible for Fairfax County to install and use solar energy for various projects, consistent with the goals set forth in the County's recently adopted 2018 Operational Energy Strategy. Some components of the reform package are particularly critical, such as allowing non-contiguous net metering and lifting the cap on the total amount that can be net metered. One specific example of a project that has been impeded by restrictions on net metering is at the I-95 Landfill Complex, where the County has long been interested in installing a large solar array (up to 4.5 MW). Virginia policies have precluded the County from installing and operating this solar array because current state law limits the solar array size and restricts the use of electric generation from solar arrays on the I-95 Landfill Complex at a "non-contiguous" property. As a result, although there is more than enough room at the I-95 Landfill Complex, the County cannot install a solar array capable of providing renewable energy to both the I-95 Landfill Complex and other nearby County sites, such as fire stations, parks, police stations, the Norman M. Cole Jr. Pollution Control Plant, and the Workforce Arts Center. In addition, staff has explored the possibility of using a PPA for the I-95 Landfill Complex, and the proposed changes would make doing so feasible.

The County has previously sought legislation to address some of the aforementioned barriers. In 2014, the County worked with interested parties on a regional initiative that would have authorized localities to generate renewable energy on their property and use this energy generation to offset energy consumption at other locally-owned sites. Though that bill was left in House Commerce and Labor after opposition was voiced by Dominion, the issue of net metering was sent to the State Corporation Commission for study. Subsequently, the GA has made some changes to net metering, but has yet to address the primary barriers to municipal net metering.

RECOMMENDATION:

The proposed Solar Freedom reform package is consistent with the County's 2014 efforts, the "Global Climate Change/Environmental Sustainability Initiatives" position in the Legislative Program, and the County's 2018 Operational Energy Strategy. Direct staff to retain the current position on Global Climate Change/Environmental Sustainability Initiatives in the Legislative Program and add the language below (highlighted in yellow) to further emphasize solar net metering. Also direct staff to monitor for the introduction of specific legislation in 2019 in order to bring related bills to Legislative Committee for consideration by the Board of Supervisors.

Global Climate Change/Environmental Sustainability Initiatives

Support efforts to reduce the County's greenhouse gas emissions and operational demand for energy through efficiency, conservation, renewable energy, and education.

The basis for these efforts is Fairfax County's strategic direction and commitment to achieve environmental and energy goals, including those set forth in the County's 2017 Environmental Vision, 2009 Energy Policy, 2018 Operational Energy Strategy, and County's Comprehensive Plan.

Also, support incentives and opportunities for the expansion of renewable energy and energy efficiency initiatives, such as:

- Removal of barriers to municipal net metering, including allowing local governments to install solar facilities of up to five MW and use the energy generated on non-contiguous government-owned property.
- Opportunities for consumers to purchase or generate renewable energy, including expanding the availability of net metering programs, which allow eligible customers to offset their power consumption by selling self-generated power back to the energy grid. Legislation in 2015 raised the cap on the amount of energy that may be net metered by eligible customers, but more flexibility is needed to maximize the cost-effectiveness of larger projects.
- Increased flexibility in the restrictions governing third-party power purchase agreements (PPAs) for renewable energy. PPAs can facilitate the adoption of renewable energy by reducing the up-front costs, thus assisting in reducing greenhouse gas emissions and other forms of pollution. Legislation was passed in 2013 to authorize a limited pilot program for such arrangements, subject to certain system-size requirements and an overall cap of 50 MW on generation.
- State income tax incentives for businesses or residents to defray a portion of the cost of new construction or improvements which save energy and mitigate adverse environmental impacts.
- Funding of renewable energy grant programs and incentives to assist the development and growth of energy businesses and technologies, such as renewable distributed energy generation. *(Updates and reaffirms previous position.)*

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

Add a position (to the Legislative Program or Human Services Issue Paper) in support of state legislation that would enable localities to charge a fee on transportation network companies (TNCs) operating in Virginia. This fee could be attached to registration/licensing or revenue/rides, and would be dedicated to ensuring equivalent service for underserved populations, including people with disabilities, older adults, and people with low incomes.

SOURCE:

Fairfax Area Disability Services Board
July 2018

BACKGROUND:

The Legislative Committee has considered proposals on this topic in previous years. 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 most well-known 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).

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. Fairfax County staff are exploring the feasibility and legal implications of partnering with TNCs to supplement County services (an update on this program will be provided during the Board's October 9, 2018, 50+ Committee meeting). The proposed project will convert the County's existing Taxi Voucher Program into an automated Transportation Options Program, which will allow qualified residents to access the mode of transportation that best meets their needs, including taxis, TNCs, WMATA, and buses. 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 disability, income, and age. Outside of Virginia, TNCs are providing financial incentives to TNC drivers in some cities that require TNCs to provide wheelchair-accessible service.

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, according to the DMV's FY 2018 Fourth Quarter report (the DMV's last report on TNCs), 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 who need to remain in wheelchairs while in transit are "frustrated with the lack of accessible [TNC] vehicles available," and people who can transfer from their wheelchair into a standard sedan-type car "are anxious that they will encounter a driver who may not be accommodating" and willing to transfer the wheelchair into the vehicle (VACIL did note that individuals with sensory disabilities have successfully used TNCs). A transportation needs assessment recently conducted by the Virginia Board for People with Disabilities recommends that the state establish a TNC Accessibility Task Force, fund pilot programs, and establish TNC accessibility requirements to address this issue, but it is not clear if further action will be taken on these recommendations at present.

At the national level, the US Department of Justice reports receiving complaints from people with disabilities (complaint data is not publicly released so specific numbers are not available). In addition, the Washington, D.C.-based Equal Rights Center filed a lawsuit against Uber in June 2017, alleging that it does not provide sufficient wheelchair-accessible services (similar lawsuits have been filed throughout the US).

A number of jurisdictions throughout the country have enacted a fee or tax on TNC trips. Chicago and Seattle use a portion of the revenues raised from their TNC tax for wheelchair accessible services, but most jurisdictions use the revenue for education, transit, transportation, and other purposes. Regionally, in 2015 Maryland passed a law allowing localities to impose a per-trip assessment on TNCs up to 25 cents, as long as they use the revenue raised for transportation purposes. In October 2018, Washington, D.C., enacted a six percent fee on TNC fares – 83 percent of the revenue generated provides funding for WMATA. In 2018, the Virginia Senate Finance Subcommittee on Transportation included a proposal to implement the sales and use tax on TNC trips as part of its plan to address statewide transit funding needs, but the proposal was unsuccessful. The 2018 GA also considered, but did not pass, a bill on TNC nondiscrimination policies – **HB 1013** (Simon), which the County supported.

RECOMMENDATION:

The Fairfax Area Disability Services Board plans to conduct a needs assessment for the first time since 2009. Direct staff to gather data on TNC wheelchair accessibility as part of this effort. Additionally, previous proposals from the Fairfax Area Disability Services Board resulted in the inclusion of language in the Accessibility position in the Legislative Program and Human Services Issue Paper on TNCs and innovative approaches for the provision of wheelchair-accessible services. Direct staff to retain this language and bring relevant bills to Legislative Committee for consideration by the Board of Supervisors.

TRANSPORTATION – SIDEWALKS

PROPOSAL:

Amend the current language in §15.2-2242(9) to clarify that localities have the authority to require dedication and construction of sidewalks along existing streets that abut proposed subdivisions when such facilities are described in a locality's comprehensive plan.

SOURCE:

Fairfax County Land Development Services and Department of Transportation
July 2018

BACKGROUND:

Fairfax County is served by an extensive transportation system comprised of roadways, bus and rail rapid transit, paratransit services and an international airport. In addition, an extensive sidewalk and trail system serves pedestrian and bicycle travel. A comprehensive network of sidewalks, trails and on/off road bicycle routes is an integral element of the overall transportation network, which is used by bicyclists, pedestrians, people with disabilities, joggers, in-line skaters, equestrians and others for both recreation and transportation purposes.

However, there are numerous locations in the County where gaps in sidewalks exist. Addressing that issue through the development process allows the sidewalk network to continually grow and improve. Currently, state law is unclear about the County's authority to require the dedication and construction of sidewalks in by-right developments along existing streets that abut the proposed development, unless a similar facility exists on adjacent property to which the new sidewalk can be connected. As a result, the timing of development of properties may adversely impact the provision of public facilities. For example, when one by-right development is not required to provide a sidewalk, because none exists on adjacent properties, even if a sidewalk exists two or three properties away, future adjacent by-right developments would also not be required to provide them, because they were not provided by the first development.

Such a restriction limits the County's ability to create sidewalk networks as envisioned in the Comprehensive Plan, particularly in Tysons and other major activity centers, as infill properties are developed. These missing infill portions of sidewalk also increase the County's cost to construct the overarching pedestrian network at a later date, which can lead to delays in the completion of these sidewalk links.

RECOMMENDATION:

Direct staff to conduct additional research, including discussing this issue with other localities, and report back to the Legislative Committee for further consideration by the Board.