

ITEMS FOR CONSIDERATION
IN PREPARATION OF THE FAIRFAX COUNTY LEGISLATIVE PROGRAM
2022 VIRGINIA GENERAL ASSEMBLY
November 23, 2021

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HOUSING – MANUFACTURED HOUSING

PROPOSAL:

Proposal A: Add language to the legislative program to support amending the Code of Virginia to require that localities are notified of a manufactured housing or mobile home park owner's intent to offer for sale or receipt of offers to purchase concurrent with Virginia Housing and resident notification.

Proposal B: Add language to the legislative program to support amending the Code of Virginia to require that manufactured housing or mobile home park owners provide written resident notification using plain language and when necessary, translated to a language appropriate to promote resident understanding.

Proposal C: Add language to the legislative program to support amending the Code of Virginia to increase the time period for residents to submit a manufactured housing or mobile home park purchase counteroffer from 60 days to 90 days following resident receipt of notification of a park purchase offer.

Proposal D: Add language to the legislative program to support amending the Code of Virginia to provide for greater disclosure of key terms in plain language with key definitions of any offer received (potential purchaser, length of due diligence periods, or other).

Proposal E: Add language to the legislative program to support amending the Code of Virginia to provide manufactured housing or mobile home park residents with the opportunity to benefit from any due diligence reports in the owner's possession or received during the consideration process to inform a potential counteroffer from the residents.

Proposal F: Add language to the legislative program to support amending the Code of Virginia to give localities a clear right of first refusal to make an offer when a manufactured housing or mobile home park is up for sale.

SOURCE:

Fairfax County Manufactured Housing (or Mobile Home) Task Force
November 16, 2021

BACKGROUND:

Affordable housing is critically important for all Virginians, but obtaining it is particularly challenging in Northern Virginia, where housing is increasingly out of reach for low- and moderate-income earners. Fairfax County is already experiencing a deficit of 31,000

affordable rental homes, and the gap between the need and the supply will grow considerably without new approaches for expanding housing availability and affordability. The devastating economic effect of COVID-19 has exacerbated this looming crisis, placing many individuals and families at risk of eviction in Fairfax County, including communities of color who are disproportionately impacted by the pandemic. In ensuring the preservation of affordable housing, manufactured housing communities require special considerations given their unique challenges and opportunities.

Manufactured Housing represents an important source of affordable housing that exists in several locations throughout the County. As a result, Fairfax County established the Manufactured Housing (or Mobile Home) task force at the recommendation of the County's Affordable Housing Preservation task force. The task force was directed to provide policy recommendations to ensure all residents of manufactured housing communities have an equitable opportunity for success, in accordance with the One Fairfax Policy.

Virginia code currently requires the following for notices of intent to sell a manufactured home or mobile home park:

- Park owners who offer the park for sale must provide written notice to each tenant, in accordance with specific procedures, containing the date on which the notice is sent and the price for which the park is to be offered or listed for sale at least 90 days prior to accepting an offer.
- The notice is also required to be sent to the Virginia Department of Housing and Community Development, which shall make the information available on its website within five business days of receipt.
- Once an offer is received, the owner of the manufactured home or mobile home park must send written notice of the proposed sale and the purchase price in the real estate purchase contract at least 60 days before the closing date on such purchase contract to each tenant and the Virginia Department of Housing and Community Development, which shall place the information on its website within five business days of receipt.
- Prior to accepting an offer, the owner of the manufactured home or mobile home park must consider other offers to purchase the manufactured home park from a tenant group representing at least 25 percent of the tenants with a valid lease.

The County's state legislative program includes support for changes to the Virginia Code to protect residents of mobile home parks, including support for more assistance with relocations. The task force's report is consistent with that position, and expands on existing state requirements by recommending: (1) strengthening notification requirements for owners once they receive an offer from a prospective purchaser, including extending notification response timelines from 60 to 90 days; (2) increasing notification accessibility by simplifying language and requiring translations into other languages as needed; and, (3) providing additional resources to residents to ensure their interests are protected.

Additionally, the task force has recommended a change to state law that would give a locality a clear right of first refusal to make an offer when a manufactured housing park is up for sale, allowing localities to take proactive action during a sale. These proposals protect affordable housing stock within the County but, more importantly, help residents remain in their homes.

RECOMMENDATION:

Direct staff to add language to the Affordable Housing and Homelessness Prevention position in the 2022 Legislative Program in support of expanded notification requirements and increased timelines. Proposal F, however, which provides localities with a right of first refusal when a manufactured housing or mobile home park is up for sale, is not recommended. There is no way to predict how a statutory right of first refusal would affect the underlying value of the property. A right of first refusal could have the unintended consequences of making the property less desirable for purchasers and chilling the market to drive the value of the property down. This could cause the owner to make a claim for a constitutional taking. Significantly, under existing law, a locality can make an offer to purchase the property, so a right of first refusal is unnecessary. Also, direct staff to monitor for specific budget actions or legislation in the 2022 General Assembly, and to bring related items to Legislative Committee for consideration.

Affordable Housing and Homelessness Prevention

Support state funding and actions to increase the availability of affordable housing options and prevent homelessness, including expanded investments in tools and programs to address affordable housing needs, particularly in high cost-of-living areas like Northern Virginia, and to mitigate evictions resulting from the economic impacts of the COVID-19 pandemic.

Affordable housing is critically important for all Virginians, but obtaining it is particularly challenging in Northern Virginia, where housing is increasingly out of reach for low- and moderate-income earners. Fairfax County is already experiencing a deficit of 31,000 affordable rental homes, and the gap between the need and the supply will grow considerably without new approaches for expanding housing availability and affordability. It is anticipated that 15,000 net new units affordable to households earning 60 percent of area median income and below will be needed by the year 2034. Development and preservation of affordable housing is most critical for small families, individuals with disabilities, and seniors.

The devastating economic effect of COVID-19 has exacerbated this looming crisis, placing many individuals and families at risk of eviction in Fairfax County, including communities of color who are disproportionately impacted by the pandemic. Prior to the pandemic, 45 percent of Fairfax County renters were already cost-burdened and spent at least 30 percent of their household income on rent. Cost-burdened renters who have lost jobs or had their incomes reduced as a result of the ongoing economic upheaval face greater barriers in paying for housing, making them more vulnerable to evictions. While there has been some short-term rental assistance funding and moratoriums to prevent evictions, the pandemic's financial impact will have long-term and pervasive consequences. Therefore, new substantial and sustained federal and state investments in programs and resources that enable renters to keep their housing is essential in preventing an eviction crisis and a resulting surge in homelessness in the community. Funding to mitigate the impacts of the pandemic on affordable housing must be in addition to the sizable resources already needed to address the existing affordable housing crisis in Northern Virginia.

The Commonwealth should:

- Support substantially increasing funding for the Virginia Housing Trust Fund, as well as increasing the funding cap that each development can request. This is essential to create and preserve affordable housing and reduce homelessness in Northern Virginia, where housing affordability poses substantial challenges for the economic competitiveness of the region, creating potentially negative impacts to the Commonwealth overall.
- Expand resources available to ensure legal assistance and aid to tenants facing eviction, including outreach and prevention services for potential beneficiaries.
- Expand the pool of resources available for down payment assistance, as down payment costs are a major barrier to homeownership for low- and moderate-income earners.
- Enhance and create more state-funded housing tax credits and rental assistance programs for individuals with disabilities and people experiencing homelessness, such as the Livable Homes Tax Credit, State Rental Assistance Program (SRAP), Virginia Homeless Solutions Program (VHSP), and previously provided Housing Choice Vouchers.
- Increase funding for permanent supportive housing units (allocated based on the size of the population served) for individuals with severe mental illness, substance use disorder, and developmental disabilities.
- Consider changes to state law to protect residents of mobile home parks, including more assistance with relocations, **expanded notification requirements, and increased timelines.** *(Updates and reaffirms previous position.) (Discussions with stakeholders about an appropriate funding increase for the Virginia Housing Trust Fund in FY 2023 are ongoing and more detail will be added to this item as consensus is reached on that request.) (Position on state support for affordable housing shared by the region.)*

HUMAN SERVICES – LONG TERM CARE PERSONNEL STANDARDS FOR THE DIRECT PROVISION OF PATIENT CARE

PROPOSAL:

Support legislation that would amend § 32.1-127 of the Code of Virginia and 22 VAC 40-73-1130 of the Administrative Code to increase direct care staffing levels for long term care to ensure better health outcomes and quality of care for medically frail individuals, including older adults and individuals with disabilities.

SOURCE:

Fairfax County Health Care Advisory Board
July 27, 2021

Fairfax Area Commission on Aging
July 27, 2021

Fairfax County Long Term Care Coordinating Council
July 27, 2021

BACKGROUND:

Long term care (LTC) facilities, including nursing homes, skilled nursing facilities, and assisted living facilities (ALF), provide medical and personal care to people who are unable to live independently. The federal government does not regulate a minimum number of direct care hours in long-term care facilities, and Virginia is one of 16 states with no required staffing standards – either staff-to-resident ratios or a minimum number of direct care hours. However, studies reviewing the quality of care in Virginia’s nursing homes have often led to discussions about whether or not establishing staffing standards would improve quality of life and protect residents in nursing homes. The same studies have concluded that staffing is only one of many issues that contribute to quality of care problems for nursing home residents.

The Commonwealth has low Medicaid reimbursement rates for skilled nursing care, making recruiting and retaining highly qualified, dependable staff difficult due to low wages, limited benefits (i.e., paid sick leave), and stressful working conditions. On average, nursing homes in Virginia also have higher average acuity residents than nursing homes in most other states, and higher acuity requires more skilled staff hours.

Additionally, many facilities are chronically understaffed, with annual turnover among assisted living Certified Nursing Assistants (CNAs) averaging over 48 percent in 2020, while the median turnover rate among nursing staff was 94 percent in nursing homes. Poor compensation for direct care workers has led many staff to secure additional

employment at a second or third LTC facility to earn income to support their household's needs. This can create substantial stress on workers, as well as potentially increasing the risk of introducing outside illnesses and disease among vulnerable populations (higher wages could allow a worker to secure more shifts at a single facility). The COVID-19 pandemic has exacerbated many of these issues and magnified systemic problems.

The Virginia Office of the State Long-Term Care Ombudsman receives and investigates complaints from nursing home residents and family members – complaints related to insufficient staffing consistently make up nearly half of total complaints. Inadequate staffing also presents equity concerns, as generally, facilities with fewer staff are also those with higher concentrations of Medicaid recipients and Black residents.

In the Virginia General Assembly (GA), Delegate Vivian Watts has introduced legislation on this topic over the past two decades (most recently HB 2156 (2021)). Senator Jennifer Kiggans also introduced similar legislation during the 2021 GA session (SB 1149). All such legislation has been unsuccessful. Instead, the GA directed the Joint Commission on Health Care to study and make recommendations on nursing facility workforce and quality this year – the Commission's report provides eight policy options to improve staffing and care, including: requiring all nursing homes to meet a baseline staffing level; funding evaluation of incentive payments for nursing homes that meet higher staffing levels, above the required baseline; implementing workforce development programs; increasing Medicaid reimbursement for nursing homes with a high Medicaid population; or, increasing Medicaid reimbursement for residents with specific behavioral health diagnoses. Language in the 2020-2022 biennium budget directs the Virginia Department of Medical Assistance Services (DMAS) to work with appropriate nursing facility (NF) stakeholders and the Commonwealth Coordinated Care Plus managed care organizations to develop a unified, value-based purchasing program. This is a standard of payment that has been used in other parts of the country, which could help improve the process of providing reimbursements to nursing homes.

The failure of state legislation to increase staffing standards has primarily been due to the considerable fiscal impact – the Virginia Department of Planning and Budget estimated that HB 2156 would cost the Commonwealth \$26.3 million in General Funds (GF) and \$28.4 million in Non-General Funds (NGF) in FY 2023. By FY 2031, costs would total \$174.6 million (\$83.8 million GF). In addition, legislation to increase staffing standards has also met opposition from LTC industry groups. Further, it is difficult to demonstrate that staffing ratios alone would lead to better care and outcomes for residents of nursing homes and skilled nursing facilities, as the impact of raising staffing standards could create challenges for LTC facilities seeking to hire staff at a time when there are already significant worker shortages in this area.

In addition to the state fiscal impact, increasing staffing standards could also have a fiscal impact on the County. In particular, such a change could have cost implications for

Birmingham Green, a nursing and assisted living facility in Manassas. At this time, with exact costs unknown, the County's fiscal impact is indeterminate, though it could be significant. Birmingham Green receives funding for operating costs through a variety of sources, including Medicaid, Medicare, other insurance, and private pay – to the extent that these sources are inadequate to cover the full costs of the facility's operations, Fairfax County and the four other local sponsoring jurisdictions provide funding to subsidize the facility on a user formula basis. Each jurisdiction pays for personnel and operating expenses at a level proportionate with the number of the jurisdiction's residents.

If staffing standards were extended across the LTC continuum to include all assisted living facilities, the County's expenses could increase. The County has contracts with Sunrise Senior Living to operate Braddock Glen and Coordinated Services Management (CSM) to operate Lincolnia.

RECOMMENDATION:

Direct staff to add language to the Human Services Issue Paper in support of improving quality long term care in Virginia's skilled nursing facilities (do not recommend including language related to ALFs, as additional study is needed before legislation related to that issue is considered). Also, direct staff to monitor for the introduction of legislation during the 2022 GA session in order to bring relevant bills back to the Board for consideration at Legislative Committee.

TAXATION – SURVIVING SPOUSE TAX EXEMPTION

PROPOSAL:

Support legislation that would allow a small group of spouses of veterans killed on duty to continue receiving a real estate tax exemption in Fairfax County, which was initially granted as a result of confusing statutory language and limited guidance from the Virginia Department of Veteran's Services.

SOURCE:

Fairfax County Board of Supervisors
October 19, 2021

BACKGROUND:

In 2014, the voters of Virginia approved a Constitutional amendment which exempts from taxation, under certain eligibility requirements, the real property of the surviving spouse of a member of the armed forces of the United States who was killed in action, as defined by the Department of Defense. The exemption became effective January 1, 2015. In order to qualify for this property tax exemption, the surviving spouses of service members killed in action cannot remarry and must own a single-family residence that they occupy as their principal place of residence. The beginning date of an exemption for a qualified applicant is determined from the date the member of the armed forces was killed in action, and the date the surviving spouse acquired his/her principal residence. The beginning date of the exemption cannot be before January 1, 2015.

In accordance with the Code of Virginia, Fairfax County began offering this exemption in 2015. It was recently discovered that a small group of surviving spouses in Fairfax County were, due to confusion regarding the language of the statute, inadvertently approved for the exemption and have been receiving it for several years. Their deceased veteran spouses died while serving in the armed forces, but they do not meet the federal definition of "killed in action." Some were 9/11 victims, and some died while deployed overseas, but they were not killed by an enemy in combat. As such, the Fairfax County Department of Tax Administration was informed by the Commonwealth of Virginia that the County may no longer grant the exemption to these individuals.

Since 2009, the GA has approved or expanded a number of property tax exemptions, including for 100 percent disabled veterans, their surviving spouses, and the surviving spouses of veterans killed in action. While providing assistance to these groups is a worthy goal, it has long been the County's position that if the Commonwealth would like to provide financial assistance to these individuals it should also pay for that assistance directly, rather than imposing the cost on localities through mandatory property tax exemptions. It is important to note that property taxes are one of Virginia localities' few significant sources of revenue, due to the state's antiquated taxing structure. Such

property tax exemptions can drain significant resources from localities, negatively impacting the revenues used to fund core services like K-12 education, public safety, human services, the environment, and infrastructure, among others. However, in this case, this small group of individuals believed they were eligible for the exemption based on the County's approval of their applications. They have received the exemption for several years, and have planned their finances around its continuance.

Potential Impact of Property Tax Exemption

- The impact for the small number of applicants who were inadvertently approved in Fairfax County is approximately \$63,000 each year.
- According to the Department of Veterans Affairs, 14,895 surviving spouses receive Dependency and Indemnity Compensation (DIC) in Virginia.
- The VA does not have data specific to each region or locality, but based on the number of existing participants for the disabled veteran program in Fairfax County relative to the rest of the state, Fairfax County may have approximately 1,490 participants – with that many participants, the recurring fiscal impact would be approximately \$10.3 million.
- This estimate does not include applicants who may relocate to Fairfax County from other localities.

RECOMMENDATION:

Direct staff to add language to the 2022 Legislative Program in support of a narrowly crafted solution that will allow the County to continue to provide this property tax exemption to the small group of individuals who have previously received it, while reiterating the County's position that any expansion of local tax exemptions should be a local option, rather than a mandate. Also, direct staff to monitor for the introduction of legislation during the 2022 GA session in order to bring relevant bills to the Legislative Committee for consideration.

**GENERAL GOVERNMENT – VIRGINIA FREEDOM OF INFORMATION ACT (VFOIA)
AND RESIDENTIAL TRAFFIC PROGRAM BALLOTING**

PROPOSAL:

Initiate legislation to amend the Virginia Freedom of Information Act (VFOIA) to exempt personal information submitted as part of a residential traffic program ballot process.

SOURCE:

Fairfax County Department of Transportation
July 2021

BACKGROUND:

In a congested, suburban environment like Fairfax County, transportation safety is critically important for drivers, bicyclists, and pedestrians. A variety of measures can be used to address such issues, as traffic in and around neighborhoods can create significant challenges. One approach in particular, traffic calming, seeks to decrease the impacts of traffic and enhance safety in neighborhoods by placing devices (including speed humps, speed tables, raised pedestrian crosswalks, chokers, and median islands) in or along the roadway to reduce vehicle operating speeds to the posted speed limit without restricting access.

The Virginia Department of Transportation (VDOT) provides guidance and procedures for local communities to pursue traffic calming or cut-through restrictions in neighborhoods on streets maintained by VDOT. Local residents, homeowners associations (HOAs), or civic associations can initiate a request to their locality for traffic calming or cut-through restrictions. Per VDOT's guidance, the locality conducts a petition, survey, or other process that ensures the accurate measure and documentation of support. Only occupied residences or businesses in the survey area are included in assessing community support (for example, signing a petition or casting a ballot). Each residence or business is allowed a single signature or vote to indicate agreement or disagreement with the proposed traffic calming or cut-through restriction plan measure, and more than 50 percent of the occupied residences or businesses in a survey area must support the traffic calming or cut-through restriction plan for it to be implemented.

The Fairfax County Department of Transportation's (FCDOT) Residential Traffic Administration Programs (RTAP) administers five residential traffic programs, including the Traffic Calming Program and the Cut-Through Restriction Program. The Traffic Calming Program generally uses physical devices (such as speed humps and raised median islands) to reduce speed on the roadway, while the Cut-Through Restriction Program deals with excessive cut-through traffic on state-maintained residential roads, and generally uses time of day turn restriction signs as a way to reduce the volume of

traffic on a roadway (more aggressive physical devices can be used to prevent access where needed).

Consistent with VDOT requirements, both programs employ a ballot process using street addresses and names associated with the identified address to help determine community support. Participants can hand deliver, mail, or email their ballots to the Fairfax County Board of Supervisors' office for the magisterial district in which they live. The information is then compiled to determine the success or failure of the balloting on that particular traffic calming or cut-through restriction proposal.

As is the case with many documents or records submitted to the County, traffic calming and cut-through restriction ballots are considered public documents under VFOIA. As a result, the names and street addresses of the individuals who participate in the ballot process are also subject to VFOIA, as well as information about how they voted on a particular traffic calming or cut-through restriction proposal. Numerous County residents have expressed surprise and concern that their personal information can be made public as part of this process. As a result, County staff have recently added notices to ballots to ensure residents are aware that a participant's personal information is subject to VFOIA; however, traffic calming and cut-through restriction measures can become contentious, and residents may still have concerns about participating if they know their personal information will be made publicly available. Because the ballot change is fairly new, County staff are still evaluating the impacts on participation in the overall traffic calming process.

Update for November 23, 2021, Legislative Committee

As a result of the discussion at the October 26 Legislative Committee meeting, County staff conducted additional research regarding the County's existing residential traffic program ballot process. Aside from VDOT guidance requirements for the process delineated above, VDOT provides localities with significant flexibility to select methods for determining community support for residential traffic programs.

As discussed on October 26, County staff recently added notices to ballots to ensure residents are aware that a participant's personal information is subject to VFOIA. Staff have also recently eliminated the ballot signature requirement to provide additional privacy. The redesigned ballots are currently in use in five ongoing County traffic balloting programs. There have been no issues with the redesigned ballots, and no negative feedback has been received from the community thus far. As a result, staff would like to continue with the current balloting system, using the revised ballots. Staff will continue to monitor and collect data on the process to ensure the program continues to run smoothly, in case additional changes are needed.

County staff also continue to evaluate alternative options to gauge community support, including the possibility of different ballot designs that meet VDOT guidelines and protect residents' privacy to the greatest extent possible, if such options are needed in the future.

RECOMMENDATION:

Direct staff to continue to monitor the impacts of the revised ballots for residential traffic programs, including community feedback, and provide updates to the Board as needed. Do not recommend pursuing legislation during the 2022 General Assembly at this time, but if revising the ballots and using other approaches within the County's existing authority is unsuccessful, the County should consider legislation for the 2023 General Assembly.