

**ITEMS FOR CONSIDERATION**  
**IN PREPARATION OF THE FAIRFAX COUNTY LEGISLATIVE PROGRAM**  
**2023 VIRGINIA GENERAL ASSEMBLY**

**October 18, 2022**

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## **ENVIRONMENT – SOLID WASTE**

### **PROPOSAL:**

Support legislation providing greater authority in the Code of Virginia to local governments to manage solid waste collection, including monitoring legislation affecting the ability of local governments to implement a franchising model.

### **SOURCE:**

Board of Supervisors  
September 13, 2022

### **BACKGROUND:**

Solid waste management, or the collecting, treating, and disposing of solid material that is discarded, is essential in every community. Improper disposal of municipal solid waste can create unsanitary conditions, which lead to pollution, environmental degradation, and outbreaks of diseases spread by wildlife and insects. Solid waste management utilizing recycling, diversion, and waste reduction is an important strategy to create and preserve a sustainable community. Though solid waste management can be challenging, picking up trash and properly managing recyclable and reusable materials in a timely and proper manner is critical to public health, environmental protection, and quality of life.

In Fairfax County, approximately 10 percent of residents receive trash, recycling, and yard waste collection services from Fairfax County Government. Fairfax County provides residential service only within Sanitary Districts, defined service areas created by a petition of 55 percent of residents in each defined area and created by a majority vote of the Board of Supervisors after a public process.

The remaining 90 percent of residents and almost all businesses in Fairfax County are served by private collection companies. Residents are billed by the collection company or pay via their homeowner association (HOA) fees.

Virginia law grants broad authority to local governments in the field of solid waste collection and disposal, so Fairfax County has set requirements for all waste collectors licensed to operate to provide for good public sanitation, protect the environment, and enhance quality of life by ensuring that collectors meet their obligations to the community. It is important to note, however, that individual residents, HOAs, and businesses have contractual relationships with licensed collectors and, as a result, they can individually hold their collector accountable for not upholding the terms of those contracts.

In 2019, numerous community complaints of late and missed garbage pick-ups led to a Consent Agreement between the Fairfax County Department of Public Works and Environmental Services (DPWES) and American Disposal Services (ADS), among the largest of the licensed collectors serving the County. That Consent Agreement imposed a civil penalty against ADS and required the company to verify that it was working to improve its customer service and compliance with the County's solid waste ordinance. As a result of the County's efforts, service began to improve and community complaints decreased.

Unfortunately, the COVID-19 pandemic created substantial challenges for all solid waste collectors, including the County's own collection services. Those struggles continue to be exacerbated by an acute nationwide labor shortage including a shortage of employees with commercial driver's licenses (CDL), in addition to supply chain disruptions that negatively affect the repair and replacement of equipment.

Since that time, many solid waste collectors in the County have recovered and service levels have stabilized, but since January 2022, community complaints against ADS have increased significantly. In October 2022, a second Consent Agreement between Fairfax County DPWES and ADS was established to address complaints of late and missed pick-ups throughout 2022.

This surge in complaints, which account for approximately 86 percent of all waste collection complaints received by the County, have led to consideration of alternative solid waste management system models, and whether such alternatives could improve the quality and/or reliability of service delivery.

One such model is franchising. Under a franchising model, the County would likely be divided into several different zones, and each zone would be served by a single collection company. Customers would pay for service based on County-negotiated rates. Virginia law specifically provides for franchising, allowing local governments to enact an ordinance to that effect, including the creation of one or more exclusive service areas and the rates to be charged in those areas. The establishment of a County franchise for solid waste would require a public hearing, 45 days of written notice of the hearing to all private companies that provide service in the County, and provide public notice of the hearing.

However, the Code of Virginia also includes some additional, very onerous requirements on a locality's ability to enact a franchise agreement. Because implementing a franchising model means that some collection companies would be prohibited from serving areas that they currently serve, the County is required to take certain actions prior to that occurring. If a company is going to be displaced, the Code allows the Board of Supervisors up to one year to enact the ordinance following the public hearing and provides two options for handling displaced companies. First, the County can delay displacement for five years following passage of the ordinance. In practical terms, this means passing an ordinance with a delayed effective date five years in the future. Second, the County can pay the companies an amount equal to the companies'

preceding twelve months' gross receipts for the displaced service in the displacement area; if such a payment is made, the ordinance can take effect immediately. There are a number of actions that do not constitute "displacement," including regulatory action against a company for threatening public health and safety, non-renewal of an existing contract if it is awarded to a different company, the County creating a new Sanitary District, and actions for breach of contract with a locality, among others.

Based on current market conditions and resource limitations, the County cannot expand collection services provided by County staff. The County is evaluating a new customer service model to allow for creation of new Sanitary Districts serviced by a contractor managed by the County, which is possible under current authority and does not constitute franchising. If the County were to move to a franchising model for solid waste collection, it would be important to consider the timing of such action and the ordinance development process, as existing private haulers would be competing to win bids to service franchise areas, system routing and contractor performance during that process would impact service delivery, and resources would be needed to handle administration and communication systemwide to ensure a smooth transition to a new service delivery model for Fairfax County.

RECOMMENDATION:

Direct staff to add language to the "Local Authority" position in the 2023 Legislative Program in support of legislation that increases local authority to address oversight of solid waste collection. Also direct staff to monitor for the introduction of legislation related to franchising or other solid waste collection models to bring to Legislative Committee for consideration by the Board of Supervisors.

## **ENVIRONMENT – LIVING SHORELINES**

### **PROPOSAL:**

Amend the 2020 living shorelines legislation to explicitly address shoreline stabilization structures and “grandfather” in existing hardened shoreline structures (including sea walls/bulkheads and rip rap) so that they can be repaired and maintained when appropriate.

### **SOURCE:**

Environmental Quality Advisory Council (EQAC)  
August 5, 2022

### **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 Wetlands Zoning Ordinance and Comprehensive Plan to reflect these changes.

Some property owners have expressed concerns about this shift in policy, including concerns that the cost of replacing more traditional shoreline structures, like bulkheads or riprap, will be prohibitive. Additionally, the term “best available science” as used in the legislation appears subjective, creating the potential for uncertain outcomes for property owners, potentially requiring them to hire expensive experts to satisfy this standard. Finally, there are concerns that living shorelines may result in some loss of the use of their property.

Grandfathering existing hardened shoreline structures so they can be repaired and maintained appears to provide a compromise solution to this issue. However, grandfathering runs counter to the original intent of SB 776, which makes it the law of the Commonwealth to favor living shorelines, especially if hardened shorelines are replaced in kind under grandfathering provisions without any offset to improve environmental conditions (e.g., a mitigation bank payment that could be used to restore a living shoreline elsewhere). In addition, property owners may be compelled to modify shoreline treatments if deferred maintenance results in a change to site conditions, and they may still be required to engage licensed professionals when the proposed shoreline treatment requires them to obtain a building permit from Fairfax County Land Development Services due to the type of facility or the land uses supported by the facility. Furthermore, the law does not prohibit a property owner from making repairs to hardened shoreline structures in cases where no permit is required from the VMRC or the local Wetlands Board. Finally, not every case will require the use of an expert to meet the “best available science” standard. Living shorelines are not warranted or appropriate in every shoreline, and the VMRC and the local Wetlands Board have the expertise to make that determination, which is why they have been provided with that authority.

The 2022 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. Also, the bill would have prohibited a wetlands board from requiring replacement of an existing shoreline improvement with a living shoreline if the living shoreline would substantially detract from established use and enjoyment of the property. That legislation did not pass the GA.

There are resources available to assist property owners in navigating the changes to state and county codes resulting from the passage of SB 776. The following websites provide a variety of guidance and information regarding the permitting process and appropriate shoreline stabilization techniques. The first two sites provide free information about conditions at tidal wetland shorelines and future climate impacts, including the widely used 2017 National Oceanic and Atmospheric Administration (NOAA) Intermediate-High scenario projection curve.

- VIMS Center for Coastal Resources Management – Fairfax County Comprehensive Map Viewer:

- [https://cmap2.vims.edu/CCRMP/Fairfax2012/Fairfax\\_CCRMP\\_Viewer.html](https://cmap2.vims.edu/CCRMP/Fairfax2012/Fairfax_CCRMP_Viewer.html)
- ADAPT VA: [http://cmap2.vims.edu/AdaptVA/adaptVA\\_viewer.html](http://cmap2.vims.edu/AdaptVA/adaptVA_viewer.html)
- Fairfax County's Tidal Wetlands & Shorelines: <https://www.fairfaxcounty.gov/plan2build/tidal-wetlands-and-shorelines>
- VMRC Wetlands Guidelines: [https://mrc.virginia.gov/Notices/2021/Final-Draft-Wetlands-Guidelines-Update\\_05-19-2021.pdf](https://mrc.virginia.gov/Notices/2021/Final-Draft-Wetlands-Guidelines-Update_05-19-2021.pdf)

In addition, the Virginia Soil & Water Conservation District has a loan program to help residents install living shorelines, which includes a cost-share component. Information about that program can be found at <https://vaswcd.org/living-shorelines>.

Staff from the Fairfax County Departments of Land Development Services, Planning and Development, and Public Works and Environmental Services are coordinating with the Fairfax County Wetlands Board to develop a mock application for living shoreline projects and associated guidance to assist property owners.

**RECOMMENDATION:**

Do not recommend initiating legislation at this time, but direct staff to monitor for the introduction of related legislation to bring to Legislative Committee for consideration by the Board of Supervisors. Also direct staff, in conjunction with the Wetlands Board, to provide information to inform property owners about the resources available in addressing issues related to living shorelines.

## **TRANSPORTATION – ILLEGAL SIGNS IN THE RIGHT-OF-WAY**

### **PROPOSAL:**

Initiate legislation to amend Virginia Code § 33.2-1225 to allow the County to use contractors to remove illegal signs from the right-of-way.

### **SOURCE:**

Department of Code Compliance (DCC)  
August 24, 2022

### **BACKGROUND:**

In Virginia, the state-maintained right-of-way includes property along a roadway on either side and in the median, which is maintained by the Virginia Department of Transportation (VDOT). This area does not belong to individual property owners, and it must be kept clear for motorist safety and so road crews have room to work. Unfortunately, illegal signs in the right-of-way have been an issue throughout the Commonwealth for many years, and the proliferation of signs creates dangerous hazards as well as a negative effect on the appearance of highways.

Following extensive stakeholder discussions, the General Assembly (GA) passed legislation many years ago (§ 33.2-1224, Code of Virginia) prohibiting signs and advertisements within the limits of the highway. VDOT is authorized to remove any sign that is in violation of state code, especially if it interferes with roadside maintenance or presents a safety hazard to motorists. In addition, VDOT can levy a \$100 civil penalty for each sign violation.

The law also authorizes VDOT to work with localities to enforce this law. However, a separate statute (§ 33.2-1225) specifically authorizes the Commissioner of Highways (Commissioner) to enter into an agreement with Fairfax County to act as the Commissioner's agent for the purpose of removing and disposing of illegal signs from the Commonwealth's rights-of-way and collecting civil penalties and costs. This statute allows the County to authorize law enforcement agencies, local governmental entities, employees, and volunteers to act on its behalf. The Code also specifies that signs and advertising promoting or providing directions to a special event erected from Saturday through the following Monday are not subject to such an agreement.

In 2013, the County entered into an agreement with the Commissioner, and the Board authorized the Sheriff's Office to act as its agent. The Sheriff's Office used the Community Labor Force (CLF) to collect and dispose of illegal signs from 99 roadways throughout the County. This summer, the Sheriff's Office notified the County that the CLF no longer had capacity to continue this work, and the CLF stopped collecting signs on August 1,



2022, raising concerns that the proliferation of signs that existed prior to 2013 could return.

The 2013 agreement with the VDOT Commissioner is entirely based on Virginia Code § 33.2-1225, which specifies that the County can authorize law-enforcement agencies, local governmental entities, employees, and volunteers to act on its behalf, but not contractors. Because the Office of the Attorney General – the Commissioner’s counsel – has also concluded that § 33.2-1225 does not allow the County to use contractors, it is unlikely that the Commissioner would agree to such a change to the current agreement.

County staff also examined the potential expansion of a current, innovative program – the County’s Department of Public Works and Environmental Service’s (DPWES) work with Operation Stream Shield (OSS). But an expansion of OSS would still require the County to enter into contracts with local nonprofits to provide labor, which presents the same problem as hiring other contractors to remove signs. The County’s existing sign removal program has been fairly labor intensive – signs were regularly picked up every week between Tuesday and Thursday by the CLF. Once the signs were removed, they were stored for five calendar days at the I-66 Transfer Station, where they could be reclaimed. Unclaimed signs would be destroyed after five days.

In a separate program, VDOT’s Adopt-a-Highway, groups may collect signs at any time on their designated roads, and they may destroy those signs. That program continues to exist. The County could certainly use volunteer labor on a small scale as well, but any larger effort raises considerable safety and enforcement concerns.

#### RECOMMENDATION:

Initiate legislation to amend Virginia Code § 33.2-1225 to allow the County to use contractors, in addition to local law-enforcement agencies, local governmental entities, employees, and volunteers, to remove and dispose of illegal signs from the right-of-way.

## **TRANSPORTATION – PEDESTRIAN SAFETY**

### PROPOSAL:

Initiate legislation to amend Virginia Code § 46.2-924 to clarify that localities in Northern Virginia are authorized to post appropriate and clear signage requiring motorists to stop for pedestrians in crosswalks at unsignalized intersections.

Further, initiate legislation to amend Virginia Code § 46.2-1300 to clarify that all counties that do not maintain their own roads are authorized to reduce speed limits to less than 25 miles per hour, but not less than 15 miles per hour, on highways within their boundaries within business or residential districts, as is currently allowed for localities that maintain their own roads.

### SOURCE:

Board of Supervisors  
September 20, 2022

### BACKGROUND:

Transportation safety is a critically important issue for all Virginians. The urgency surrounding this issue in Fairfax County has been highlighted in recent months, as a number of tragic accidents have heightened the community's concerns about the need to implement measures to protect drivers, bicyclists, and pedestrians throughout the area. In the last few years, the General Assembly (GA) provided localities with additional, common-sense tools to help address these issues, but unfortunately, it seems the law needs to be clarified to ensure the Virginia Department of Transportation (VDOT) implements the new laws the way it was understood they would be implemented when they were being considered by the GA.

In 2020, the GA passed legislation that clarified the responsibilities of both drivers and pedestrians to reduce the number of pedestrian injuries and fatalities that occur each year, a long-time County priority. Specifically, HB 1705 (Kory) clarified the duties of vehicle drivers to stop when yielding to pedestrians at (i) clearly marked crosswalks, whether at midblock or at the end of any block; (ii) any regular pedestrian crossing included in the prolongation of the lateral boundary lines of the adjacent sidewalk at the end of a block; or (iii) any intersection when the driver is approaching on a highway where the maximum speed limit is not more than 35 miles per hour. The bill also prohibited the driver of another vehicle approaching such stopped vehicle from an adjacent lane or from behind from overtaking and passing the stopped vehicle.

Following enactment of the legislation, County staff was informed by VDOT that while this legislation updated state law to clarify that “yield” meant to “stop” for pedestrians, signage at such crossings could not utilize “Stop for Pedestrians” signage, as the federal regulations under the Manual on Uniform Traffic Control Devices (MUTCD) specifies that the “Stop for” legend can only be used in states where the state law specifically requires that a driver must stop for a pedestrian in a crosswalk.

In 2021, the GA passed legislation authorizing local governing bodies to reduce speed limits to less than 25 miles per hour, but not less than 15 miles per hour, in business or residential districts. Following the adoption of that bill, VDOT opined that the legislation does not apply on streets that are in the state highway system, which essentially includes all roads within Fairfax County, as well as other counties that do not maintain their own roads. In an effort to remedy the situation, Delegate Carr, the patron of the 2021 bill, introduced HB 633, which would have expanded that authority to any locality, including for highways within the state highway system. Unfortunately, the legislation was unsuccessful.

Fairfax County has a wide variety of multimodal transportation options, and concentrated growth continues to exist throughout the County. As a result, improvements to multimodal safety and access to transit facilities within transit-oriented development areas, and residential neighborhoods outside those growth areas, are critical to reducing avoidable, serious accidents involving pedestrians and bicyclists. This can be achieved through infrastructure investments, better traffic safety laws, and improved coordination with the Commonwealth.

#### RECOMMENDATION:

Initiate legislation to amend Virginia Code § 46.2-924 to clarify that localities in Northern Virginia are authorized to post appropriate and clear signage requiring motorists to stop for pedestrians in crosswalks at unsignalized intersections.

Further, initiate legislation to amend Virginia Code § 46.2-1300 to clarify that all counties that do not maintain their own roads are authorized to reduce speed limits to less than 25 miles per hour, but not less than 15 miles per hour, on highways within their boundaries within business or residential districts, as is currently allowed for localities that maintain their own roads.