



County of Fairfax, Virginia

MEMORANDUM

DATE: July 15, 2024

TO: Board of Supervisors' Land Use Policy Committee (LUPC)
Kathy L. Smith, Chair

FROM: Leslie B. Johnson *Leslie B. Johnson*
Zoning Administrator

SUBJECT: **Zoning Ordinance Work Program (ZOWP)**
Land Use Policy Committee (LUPC)
July 23, 2024, at 1:30 p.m.

This memorandum provides the annual update of the Zoning Ordinance Work Program (Work Program).

Introduction

The Board of Supervisors (Board) endorsed the FY 2024/2025 ZOWP on July 25, 2023. While the work program is a two-year program cycle, Zoning Administration provides the Planning Commission and Board with a yearly update and an opportunity to evaluate and reprioritize the Work Program to ensure that it continues to align with the policies and priorities of the Board as outlined in the Strategic Plan, One Fairfax, the Comprehensive Plan, and other county-wide initiatives. The following documents are attached to facilitate discussion of the Work Program:

- Attachment 1 – FY 2024/2025 Priority 1 ZOWP Status Update
- Attachment 2 – Proposed FY 2025/2026 Priority 1 ZOWP
- Attachment 3 – Proposed FY 2025/2026 Priority 2 ZOWP
- Attachment 4 – Proposed Timelines for FY 2025/2026 Priority 1 ZOWP

FY 2024 Accomplishments (Attachment 1)

The FY 2024/2025 Work Program included a total of 15 amendment topic areas with several of these topics broken down into more specific sub-topics for a total of 23 individual items (including four First Tier items added by the Board after the adoption of the Work Program). The four items added to the Work Program include the following:



Zoning Ordinance Work Program Memorandum

Board of Supervisors' Land Use Policy Committee

Page 2

- ✓ On September 26, 2023, as part of a follow-on motion to Parking Reimagined, the Board directed staff to review accessible parking and report to the Board by July 1, 2024 (Topic 1C). The memorandum was provided to the Board on June 25, 2024, and will be presented at the Board's LUPC on July 23, 2024.
- ✓ On December 5, 2023, the Board requested the Department of Planning and Development (DPD) and other appropriate county staff to evaluate options related to the potential regulation of high-pressure gas lines within local street rights of ways. A status update was provided to the Board by memorandum in March 2024 with a presentation to the Board's LUPC on May 14, 2024.
- ✓ On March 19, 2024, the Board authorized a Zoning Ordinance amendment to strengthen the current provisions for data centers. As authorized, the amendment will include options for consideration by the Board, including, but not limited to, options for by right and special exception permissions in certain districts and over certain size thresholds, as well as additional standards for data centers (Topic 6).
- ✓ On May 7, 2024, the Board authorized an amendment to Chapter 112.1 (Zoning Ordinance). The approval of HB 816/SB 244 by the General Assembly and signed by the Governor, which take effect July 1, 2024, provides relief to public bodies that used electronic communications to hold public hearings during the Governor's declared state of emergency due to COVID-19. As a result of this legislation, actions taken by a public body using electronic communication means from March 20, 2020, until July 1, 2021, with respect to VFOIA are validated. Therefore, the meeting where zMOD was approved in fact met the State Code provisions and zMOD (Chapter 112.1) would not be considered void ab initio. With the adoption of the current Zoning Ordinance (Chapter 112.2) the Board indicated that if Chapter 112.1 was ever reinstated it would be the governing document. Chapter 112.2 has been amended seven times since its adoption and those amendments need to be incorporated in Chapter 112.1 (Topic 15). The Board adopted the amendment on June 25, 2024.

A summary of the status of each amendment topic or sub-topic is presented in Attachment 1 in ***bold italics***. A total of 17 topics/sub-topics were completed with adoption of an amendment or publication of a report, representing 77 percent of the items on the Priority 1 Zoning Ordinance Work Program including:

- ✓ Reports to the Board on accessory living units and home-based business, data centers, accessible parking, and high-pressure gas pipelines. (Topics 1A, 1B, 1C, and 1D)
- ✓ Application fees and planned district recreational minimum expenditure. (Topics 3A and 3B)
- ✓ Data Centers (Topic 6). Staff report published, Planning Commission public hearing was held, and Board public hearing is scheduled for July 16, 2024.
- ✓ Landscaping and Screening. (Topic 7)
- ✓ Minor and Editorial Revisions and State Code Updates including timing of published notices in the newspaper for public hearings, BZA membership relating to alternative members, and adding a checklist for minimum wastewater information to submission requirements for rezoning, special exception, special permit and development plan applications. (Topics 8, 8A, 8B, and 8C)
- ✓ Outdoor Lighting around astronomical facilities. (Topic 9)
- ✓ Outdoor Dining as an accessory use. (Topic 10)
- ✓ Parking and Loading rates. (Topic 11)

Zoning Ordinance Work Program Memorandum

Board of Supervisors' Land Use Policy Committee

Page 3

- ✓ Sign Regulations, Part 2. (Topic 14)
- ✓ Zoning Ordinance Modernization (Amendment to Chapter 112.1). (Topic 15)

Significant progress has also been made on the following amendment topics:

- ✓ Contractor's office and shops, and construction vehicles and equipment. (Topic 5)
- ✓ Short-term pop-up events and longer interim uses. (Topic 13)

Staff has conducted research on these topics with some outreach meetings, and both are planned to be brought forward for the Board's consideration within the next six months.

Proposed FY 2025/2026 Priority 1 Zoning Ordinance Work Program (Attachment 2)

The proposed FY 2025/2026 Priority 1 ZOWP reflects removal of items that have been completed and addition of new items that have either been requested by the Board or identified by staff. Below is a summary of the changes/additions.

Reports to the Board (**Topic 1**) was a new topic added to the Work Program in FY 2023. As noted previously, the sub-topics related to accessory living units and home-based businesses, high-pressure gas pipelines, and parking – accessible spaces, have been completed. These topics have been added to the Work Program for FY 2024/2025 as individual Priority 1 items (**Topics 2, 9B, and 11**), respectively. A new item was added to Topic 1A as part of the follow-on motion for Sign Regulations Part II to provide an update 18 months after adoption.

Accessory Living Units (ALU) (**Topic 2**) is a new topic added to the Work Program to consider revisions to the ALU provisions as further described in the [Report on Accessory Living Units and Home-Based Businesses](#), dated April 12, 2024. Staff recommends that this topic be added to the ZOWP as a Second Tier item with research and outreach to begin in Fall 2024 and an amendment to be brought forward in Spring 2025.

Affordable Housing Initiatives (**Topic 3**) has been divided into sub-topics. **Sub-topic 3A** carries forward the previous initiative to consider zoning changes to support new affordable housing initiatives and land use policies. **Sub-topic 3B** related to strategies to incentivize preservation of existing manufactured home communities is now a separate sub-topic, since it is anticipated there will be need for targeted outreach for any amendment related to manufactured housing. Zoning Administration Division staff will be working with Housing and Community Development (HCD) on these topics to determine an appropriate timeline for action.

An amendment for Application Fees and Planned District Minimum Recreational Facilities Expenditure (**Topic 4**) was approved by the Board with a phased schedule over two years; however, the Board directed staff to retain the topic on the Work Program with the intent to study fees every two years, including a review of the acreage fees associated with rezoning applications.

Department of Planning and Development staff is continuing coordination with the Office of Environmental and Energy Coordination (OEEC) on Climate Action and Resiliency Initiatives (**Topic 5**). Recent amendments for Parking Reimagined and Landscaping and Screening have furthered the goals of resiliency initiatives. These items support implementation of the

Zoning Ordinance Work Program Memorandum

Board of Supervisors' Land Use Policy Committee

Page 4

Community-wide Energy and Climate Action Plan (CECAP) and Resilient Fairfax, plans which are in the implementation phase now and may result in future amendments; therefore, the timing remains in the monitoring status.

Congregate Living Facilities (**Topic 6**) is a new topic to consider revising the definition of Congregate Living Facility to include emergency shelters and expand where congregate living facilities may be permitted with special exception approval. This item is a reframing of Topic 2B on the FY 2024/2025 Priority 1 Work Program (to consider zoning changes to facilitate adaptive reuse of vacant and underutilized commercial and industrial buildings to provide shelter, services and permanent supportive housing to people who are unhoused). After review and discussion with staff in the Office to Prevent and End Homelessness in HCD, staff found that supportive housing could be accommodated within the existing Zoning Ordinance as a multifamily residential use with accessory services, and the development of public shelters could be accommodated as a public use subject to 2232 approval in any zoning district. Privately run emergency shelters for the unhoused could be accommodated by the current definition of congregate living facilities, with the addition of further clarifying language in the definition and consideration given to expanding the zoning districts where this use would be permitted with special exception approval. Staff recommends this topic be added to the Work Program as a Second Tier item.

Contractors Office and Shop (**Topic 7**) is a proposed carryover item with an anticipated timeline for authorization of public hearings in the first half of FY 2025 (First Tier). Staff is currently conducting outreach and working on proposed text for consideration. This topic is scheduled for discussion at the Board's LUPC meeting on July 23, 2024.

Updating the floodplain regulations (**Topic 8**) is a new topic to include adoption of the new FEMA maps and other editorial updates as required. Staff proposes to consider updates to special exception requirements and revise or eliminate the special exception requirement for redevelopment of dwelling units in the floodplain when the dwelling unit predated the floodplain provisions. This is intended to encourage replacement of existing dwellings in the floodplain with flood resilient dwellings. The timing of the topic will be coordinated with Land Development Services, and they will be taking the lead.

The review of Light Utility Facilities (**Topic 9**) is a new topic and referenced on the Priority 2 Work Program to review permissions, definitions, and use standards related to these uses. Three specific topics were identified. Review of the use standards and permissions for Substations (**Topic 9A**) is added as a separate topic in response to the March 19, 2024, Board authorization of the data center amendment. High-pressure gas pipelines (**Topic 9B**) is included to address follow up questions and issues raised by the Board during the May 14, 2024, presentation to the LUPC. In addition, staff recommends adding a new use of energy storage (**Topic 9C**) with appropriate permissions and use standards. This new use was identified based on the research conducted for the data center report and amendment. Research and outreach on these topics will begin during the first half of FY 2025 (First Tier).

Zoning Ordinance Work Program Memorandum

Board of Supervisors' Land Use Policy Committee

Page 5

Minor and Editorial Revisions and State Code Updates (**Topic 10**) is intended to be an ongoing Work Program entry that will address changes to the Code of Virginia that necessitate a change to the Zoning Ordinance or other minor and editorial revisions that are limited in scope and intended to correct minor errors or updates in the Zoning Ordinance that only need limited outreach.

It is anticipated that an amendment to provide updated rates for accessible parking (**Topic 11**) will be authorized by the Board, with anticipated public hearings in the first half of FY 2025 (First Tier). This proposed amendment will consider modifications to the minimum accessible parking requirements to align with changes adopted with Parking Reimagined, which became effective on January 1, 2024. This topic was a follow-on motion adopted by the Board as part of Parking Reimagined. This topic will be presented to the LUPC for discussion on July 23, 2024.

Consideration of updates to the Planned Districts (**Topic 12**) has been moved from Priority 2 to the Priority 1 Work Program and will include a review of the additional standards for commercial uses in the Planned Development Housing District and the secondary use standards including percentage of residential uses, in the Planned Development Commercial District. In addition, staff recommends adding a submission requirement for a metes and bound description for partial Final Development Plans (FDPs). This topic is expected to be considered in the second half of FY 2025 (Second Tier).

PRC Plan Exceptions (**Topic 13**) and Short-Term Pop-Up Events (**Topic 14**) are proposed for carryover to the Priority 1 Work Program.

Priority 2 Zoning Ordinance Work Program (Attachment 3)

The Priority 2 ZOWP includes those amendments that are not proposed to be added to the current ZOWP but have been retained for future consideration. The Priority 2 list reflects potential changes recommended by various Boards, Authorities, and Commissions, as well as staff. The Priority 2 list has been included as part of the Work Program since the late 1980s to track recommendations for potential amendments. The Priority 2 list includes a summary of each item and a rationale for its deletion or retention on the list. After careful review and evaluation of the Priority 2 list during the last two Work Program reviews, the adopted Priority 2 Work Program consists of 20 individual items. Since the adopted Work Program, five items have been completed as part of the Minor and/or Editorial Revisions and State Code Updates amendment (ZO 112.2-2024-6).

- ✓ Fences for Substations and Wireless Facilities (Topic 1)
- ✓ Personal Services in C-1 through C-4 Districts (Topic 4B)
- ✓ Accessory Retail in Warehouses (Topic 4C)
- ✓ Parking – Mixed-use buildings (Topic 5)
- ✓ Short Term Lodging violations (Topic 12B)

Staff recommends an additional eight topics be removed from the Priority 2 Work Program as detailed below:

- ✓ Open Space Provisions (Topics 8A, 8B, 8C, 8D). These topics were added in 2001 as part of the Infill and Residential Development Study. Staff conducted additional review

Zoning Ordinance Work Program Memorandum

Board of Supervisors' Land Use Policy Committee

Page 6

of these topics and determined that they no longer need to be retained as separate items. These items can be addressed, if necessary, as part of the Priority 1 Climate Action and Resiliency Initiatives (Priority 1 - Topic 5).

- ✓ Planned Districts lot size, open space, and density credit (Topic 11A) is currently reviewed with the establishment of new Planned Districts as part of the review of zoning applications, and a separate amendment is not needed.
- ✓ Staff recommends moving Planned District uses (Topic 11B) and Light Utility Facility Uses (Topic 13) to the Priority 1 Work Program.
- ✓ Commercially operated Short-Term Lodging (Topic 12A) is recommended to be removed since this use can be accommodated by existing provisions.

Eight items are recommended to be retained as follows:

- ✓ Accessory structures on lots larger than 36,000 square feet (Topic 2)
- ✓ Gross floor area definitions for conventional zoning districts (Topic 3)
- ✓ Keeping of animals - horses (Topic 4A)
- ✓ ADU Ordinance administrative guidelines (Topic 6)
- ✓ Climate Action and Resiliency topic related to the R-C District (Topic 7)
- ✓ Establish airport protection overlay district (Topic 9A)
- ✓ Establish Laurel Hill historic overlay district (Topic 10A)
- ✓ History Commission review of demolition permits (Topic 10B)

In addition to the eight items recommended to be retained, as part of the Zoning Ordinance Modernization framework, staff is committed to review uses and use standards on a regular basis to ensure that the Zoning Ordinance remains current. The items being added to Priority 2 are uses that staff has increasingly received inquiries about amid changing operational characteristics. Staff has already conducted some preliminary research, and some of these proposed new Priority 2 items could be considered for inclusion on the FY 2026 Priority 1 Work Program. Staff recommends the following nine items be added to the Priority 2 Work Program, for a total of 17 items:

- ✓ Review definition and permissions for associated service uses (Topic 4D)
- ✓ Clarification of building height measurement (Topic 4E)
- ✓ Review of uses that increasingly utilize online sales, including sales of vehicles, and consider expanding permissions to allow online sales in certain commercial and industrial districts subject to appropriate use standards. (Topic 4F)
- ✓ Review of use standards for Recycling Centers (Topic 4G)
- ✓ Review of use standards for Vehicle Sales (Topic 4H)
- ✓ Review of Highway Corridor and Sign Control Overlay Districts (Topics 9B and 9C)
- ✓ Review of Short-Term Lodging standards, including permitted number of nights (Topic 12C)
- ✓ Parking Reimagined future analysis report (Topic 14A)

Conclusions and Recommendations

The FYs 2025/2026 ZOWP anticipates additional progress and completion of many of the ambitious efforts that began under the previous Work Program by the end of the year, including Contractor's Office and Shops and short-term pop-up events.

Zoning Ordinance Work Program Memorandum

Board of Supervisors' Land Use Policy Committee

Page 7

The work program was presented to the Planning Commission's Land Use Process Review Committee (LUPR) on July 11, 2024, for their review and comment. The LUPR Committee expressed appreciation for staff's efforts over the last year and was supportive of the proposed Work Program. The Committee did suggest that staff meet with them earlier during the preparation of the Work Program, January/February timeframe, for discussion and input. Staff is supportive of that request. Staff will provide an overview of the Work Program to the Board for discussion and comment at the LUPC meeting on July 23, 2024. After review and comment by the Board, the Work Program will be brought forward as a Board Matter for endorsement by the Board on July 30, 2024. Once endorsed, staff will update the ZOWP webpage, include the topic in upcoming outreach meetings, and distribute the ZOWP using a GovDelivery listserv announcement.

cc: Planning Commission
Board of Zoning Appeals
Bryan J. Hill, County Executive
Chris Leonard, Deputy County Executive
Elizabeth Teare, County Attorney
Tracy Strunk, Director, DPD
Jill Cooper, Director, Clerk Services
Thomas E. Fleetwood, Director, HCD
Bill Hicks, Director, LDS
Greg Steverson, Acting Director, FCDOT
Gabe Zakkak, Director, DCC
Jai Cole, Executive Director, Park Authority
Christopher S. Herrington, Director, DPWES
David Stoner, Deputy County Attorney
William Mayland, Assistant Zoning Administrator, DPD
Andrew Hushour, Assistant Zoning Administrator, DPD
Carmen Bishop, Deputy Zoning Administrator
Casey Judge, Deputy Zoning Administrator
Sara Morgan, Deputy Zoning Administrator