

COUNTY OF ALBEMARLE



MEMORANDUM

TO: Albemarle County Board of Supervisors
Jeffrey B. Richardson, County Executive
Doug Walker, Deputy County Executive
Trevor Henry, Assistant County Executive

FROM: Greg Kamptner, County Attorney

DATE: August 4, 2021

RE: *2021 General Assembly: Legislative Update*

The General Assembly's 2021 session resulted in the adoption of many bills with the potential to affect Virginia localities. This memorandum focuses on a select few from the 2021 session and two bills from the General Assembly's 2020 special session that may be of the greatest interest to the Board of Supervisors and the County. The bill number introducing each summary is linked to the bill itself and related information. The Virginia Association of Counties' complete legislative summary prepared by the Virginia Association of Counties may be read here: [LegSummary21.pdf \(vaco.org\)](#). As is our practice, we rely heavily on the bill summaries in the Virginia Legislative Information System, making revisions as necessary.

Summaries of New Key Laws

Animals

SB 1135 (Marsden) Dangerous dogs; procedure for adjudication; penalty. This bill restructures the procedure for adjudicating a dog as a dangerous dog to provide for: (i) written notice by an animal control officer to the owner of the dog that the officer has applied for a summons, and a prohibition on disposal of the dog by the owner for 30 days; (ii) the issuance of a summons with an option rather than a requirement that the officer confine the dog, a prohibition on the disposal of the dog other than by euthanasia, and an authorization for the court to compel the implanting of electronic identification; (iii) the holding of a hearing within 30 days unless good cause is shown; (iv) the authority of the court if deferring further proceedings without adjudicating to compel the implanting of electronic identification; and (v) a limit of 30 days for any appeal of a dangerous dog adjudication. The bill authorizes an officer to obtain a summons for a hearing to determine whether a dog that has been surrendered is a dangerous dog and provides that any dangerous dog not reclaimed from the animal control officer within 10 days of notice shall be considered abandoned.

The bill also imposes new requirements for the transfer of dangerous dogs, requiring a releasing agency that is transferring or releasing for adoption a dangerous dog in the Commonwealth to notify the receiving party of the legal requirements for keeping a dangerous dog. If the agency is transferring the dog outside the Commonwealth, it is required to notify the appropriate animal control officer of the dog's adjudication as dangerous. An owner who is bringing a dog found to be dangerous in another state to reside in the Commonwealth must notify the local animal control officer. Any owner who disposes of a dangerous dog by gift, sale, transfer, trade, or surrender must notify

the receiver in writing of the dog's adjudication as dangerous, with a violation penalized as a Class 3 misdemeanor. Finally, the bill provides that if a dangerous dog adjudication occurred within 60 days of the end of the calendar year, the first renewal of the dangerous dog registration must be included in the initial registration at no additional charge.

Comment: Although this legislation is self-executing, staff is preparing an ordinance that will soon come to the Board for consideration to amend Chapter 4, Animals, of the County Code to be consistent with this new law.

Appropriations

SB 1120 (Reeves) / HB 1949 (Runion) County executive form of government; local budgets. These bills provide that a county that has adopted the county executive form of government (Albemarle and Prince William Counties) may carry over unspent funds from year to year for multiyear capital projects and outstanding grants without having to reappropriate the funds.

Comment: This legislation was a legislative priority of the Board.

Disasters

SB 1208 (Barker) Continuity of government. This bill extends from six to 12 months the period after an enemy attack or other disaster that a locality may, by ordinance, provide for a method to assure continuity in its government and requires the ordinance to provide a method for the locality to resume normal governmental authority by the end of that 12-month period.

Comment: The Board's Continuity of Government Ordinance allows the County to return to "normal operations" within six months after the end of the COVID-19 disaster, and that six-month period would begin when the Board ends the local emergency. If more time is needed, the Board may amend the ordinance.

Districts

SB 1298 (Bell, J.) Tourism improvement districts. Upon receipt of a petition signed by a qualifying percentage of business owners, a locality is authorized to create a local tourism improvement district. When a district is established, the locality may charge fees to benefitted businesses in the district that will be used to fund tourism promotion activities and capital improvements. The locality is authorized to contract with a nonprofit entity to administer the activities and improvements.

Environmental

HB 1902 (Carr) Expanded polystyrene food service containers; prohibition; civil penalty. This bill prohibits the dispensing by a food vendor of prepared food to a customer in a single-use expanded polystyrene food service container, as defined in the bill. The bill requires certain chain restaurants to stop using these containers by July 1, 2023, and sets July 1, 2025 as the date for compliance by all food vendors. The bill provides a process by which a locality may grant consecutive one-year exemptions to individual food vendors on the basis of undue economic hardship. The bill provides a civil penalty of not more than \$50 for each day of violation, to be collected in a civil action brought by the Attorney General or the relevant locality. The penalties collected must be deposited in the Litter Control and Recycling Fund or to the treasury of the relevant locality, as appropriate. A portion of the penalties deposited in the Fund are to be used for public information campaigns to discourage the sale and use of expanded polystyrene products. Finally, the bill directs the Department of Environmental Quality to post to its website information on compliance and the filing of complaints.

Comment: Although this bill imposes a statewide prohibition, it is brought to the Board's attention because local food vendors may request the Board to grant one-year exemptions from the prohibition on the described food containers based on "undue economic hardship."

Freedom of Information Act

SB 1271 (McPike) Virginia Freedom of Information Act; meetings held through electronic communication means during a state of emergency. This bill allows a public body, or a joint meeting thereof, to meet by electronic communication means without a quorum of the public body physically assembled at one location when a locality in which the public body is located has declared a local state of emergency, provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location; and (ii) the purpose of the meeting is to provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties, and responsibilities. Under prior law, public bodies could only meet by electronic communication means when the Governor had declared a state of emergency, and only for the purpose of addressing the emergency, or when the locality's governing body had adopted a continuity of government ordinance that expressly authorized the meetings of the locality's public bodies to be held through electronic communication means. Finally, the bill requires public bodies meeting through electronic communication means during a local or state declaration of a state of emergency to (a) arrange for public access to the meetings through electronic communication means, including videoconferencing if already used by the public body, and (b) provide the public with the opportunity to comment at the meetings when public comment is customarily received.

Comment: The Board's Continuity of Government Ordinance provides the procedure and authority by which the Board and other County public bodies may conduct their meetings by electronic communication means during the COVID-19 disaster and until normal County operations resume. This bill provides an alternative source of authority for meetings of public bodies to be held by electronic communication means when "the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location."

HB 1931 (Levine) Virginia Freedom of Information Act; electronic meetings. This bill authorizes a public body to conduct through electronic communication means a meeting for which, on or before the day of the meeting, a member of the public body holding the meeting notifies the chair that the member is unable to attend the meeting due to a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance. The bill also clarifies that participation in an electronic meeting by a member of a public body due to the inability to attend because of a personal matter is limited each calendar year to two such meetings, which is current law, or 25 percent of the meetings held that calendar year rounded up to the next whole number, whichever is greater. This bill is a recommendation of the Virginia Freedom of Information Advisory Council.

Comment: This legislation provides greater flexibility over the prior law by increasing the number of meetings members of public bodies may participate by electronic communication means when they are unable to be physically present due to a family member's medical condition.

Labor

HB 2063 (Mullin) Virginia Overtime Wage Act; penalties. This bill requires an employer to compensate its employees who are entitled to overtime compensation under the federal Fair Labor Standards Act at a rate not less than one and one-half times the employee's regular rate of pay applying a new formula for any hours worked in excess of 40 hours in any one workweek. For local governments, this bill also eliminates compensatory time off in most circumstances, which was available in lieu of overtime pay. The penalties provided by the bill for an employer's failure to pay overtime wages, including civil and criminal penalties, can be significant and are the same as currently provided for failing to pay wages generally. The statute of limitations for bringing a claim for a violation of the bill is three years.

Comment: For localities, this legislation eliminates the ability of their employees who are subject to the wage and hour provisions of the Fair Labor Standards Act (*i.e.*, "non-exempt" employees) to receive compensatory time off in lieu of overtime payments, and also changes the way in which an employee's overtime pay is calculated.

Land Use

HB 2046 (Bourne) Virginia Fair Housing Law; unlawful discriminatory housing practices. This bill prohibits any locality, its employees, or its appointed commissions from discriminating: (i) in the application of local land use ordinances or guidelines, or in the permitting of housing developments, on the basis of race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, military status, or disability; (ii) in the permitting of housing developments because the housing development contains or is expected to contain affordable housing units occupied or intended for occupancy by families or individuals with incomes at or below 80 percent of the median income of the area where the housing development is located or is proposed to be located; or (iii) by prohibiting or imposing conditions upon the rental or sale of dwelling units, provided that this prohibition does not prohibit ordinances related to short-term rentals. The bill provides that it is not a violation of the Virginia Fair Housing Law if land use decisions or decisions relating to the permitting of housing developments are based upon considerations of limiting high concentrations of affordable housing. The bill also requires the Fair Housing Board, after determining the existence of an unlawful discriminatory housing practice and after consultation with the Attorney General, to immediately refer the matter to the Attorney General for civil action.

Comment: A report issued by the McGuireWoods Zoning and Subdivision Work Group entitled *Zoning and Segregation in Virginia: Part 1, Why Virginia Needs a Study of Zoning Laws and Their Connection to Segregation*, (2021) can be read here: [Zoning and Segregation in Virginia: Part 1 \(mcguirewoods.com\)](https://www.mcguirewoods.com/publications/zoning-and-segregation-in-virginia-part-1).

HB 1778 (Ward) Removal of clutter from property; civil penalty. This bill enables a locality, by ordinance, to require the removal of clutter from property, except on land zoned for or in active farming operation, or may, whenever the governing body deems it necessary, after reasonable notice, have the clutter removed by its own agents or employees, in which case the cost or expenses thereof are chargeable to and paid by the owners of the property and may be collected by the locality as taxes are collected. The bill defines “clutter” as including mechanical equipment, household furniture, containers, and similar items that may be detrimental to the well-being of a community when they are left in public view for an extended period or are allowed to accumulate. Violations of the bill are subject to the existing civil penalty applicable to violations of provisions relating to the removal of trash, garbage, refuse, litter, and similar substances from property, or through criminal enforcement.

Comment: This enabling authority may be a useful tool in unique circumstances. Staff is preparing an ordinance to bring to the Board for consideration. The proposed ordinance would amend Chapter 13, Solid Waste, of the County Code to implement this legislation.

HB 2054 (Samirah) Comprehensive plan; transit-oriented development. This bill adds reducing, modifying, or waiving local parking requirements or ratios to the strategies that may be included when certain larger localities (counties larger than 100,000 population; cities larger than 20,000 population) consider incorporating strategies to promote transit-oriented development in reviews of their comprehensive plans. The bill removes from the existing strategy of increasing development density in certain areas to reduce density in others the phrase “to reduce density in others.”

SB 5106 (Lewis) Local land use approvals; extension of approvals to address the COVID-19 pandemic. This bill extends until at least July 1, 2022, the sunset date for various local land use approvals that were valid and outstanding as of July 1, 2020. This bill was adopted during the 2020 Special Session.

Comment: The General Assembly has been legislatively extending the validity of certain land use approvals that otherwise may have expired since the Great Recession in 2009 to address the “housing crisis.” The type of approvals most affected by these extensions are likely site plans, which depict how commercial, industrial, or certain residential projects will develop in compliance with the development standards in effect at the time of their approval. In the absence of these State-imposed extensions, the County Code provides that final site plans are valid for five years, subject to extensions for cause, so that sites are developed under reasonably current standards. Final site plans approved as long ago as the latter half of 2004 may still be valid. The Board opposed further extensions in its 2021 Legislative Positions and Policy Statements.

HB 1760 (Webert)/SB 1199 (Peterson) Conservation easements; construction. These bills provide that an easement held pursuant to the Virginia Conservation Easement Act or the Open-Space Land Act must be construed in favor of achieving the conservation purposes for which it was created.

Comment: Generally, ambiguities in deeds imposing restrictions on uses and activities are generally construed by Virginia courts against the restriction. This legislation would supersede the court-created rule.

HB 2042 (Guy)/SB 1393 (Marsden) Replacement and conservation of trees during development; work group. These bills give a locality the ability to exceed general requirements in its tree replacement and conservation ordinances in specific circumstances, including development that impacts stormwater permit requirements, recurrent flooding, formerly redlined areas, and comprehensive plan compliance. The bills also direct the Secretary of Natural Resources and the Secretary of Agriculture and Forestry to convene a stakeholder work group for the purpose of developing and providing recommendations to state and local governments related to policies that encourage the conservation of mature trees and tree cover on sites being developed, increase tree canopy cover in communities, and encourage the planting of trees. The legislation will not become effective unless reenacted by the 2022 session of the General Assembly, but the stakeholder work group is effective in due course.

Law Enforcement

HB 5055 (Herring)/SB 5035 (Hashmi) Law-enforcement civilian oversight bodies. These bills authorize a locality to establish a law-enforcement civilian oversight body that may: (i) receive, investigate, and issue findings on complaints from civilians regarding conduct of law-enforcement officers and civilian employees; (ii) investigate and issue findings on incidents, including the use of force by a law-enforcement officer, death, or serious injury to any person held in custody, serious abuse of authority, or misconduct, allegedly discriminatory stops, and other incidents regarding the conduct of law enforcement officers or civilian employees; (iii) make binding disciplinary determinations in cases that involve serious breaches of departmental and professional standards; (iv) investigate policies, practices, and procedures of law-enforcement agencies and make recommendations regarding changes to such policies, practices, and procedures; (v) review all investigations conducted internally by law-enforcement agencies and issue findings regarding the accuracy, completeness, and impartiality of those investigations and the sufficiency of any discipline resulting from them; (vi) request reports of the annual expenditures of law-enforcement agencies and make budgetary recommendations; (vii) make public reports on the activities of the law-enforcement civilian oversight body; and (viii) undertake any other duties as reasonably necessary for the law-enforcement civilian oversight body to effectuate its lawful purpose to effectively oversee the law-enforcement agencies as authorized by the locality. Such oversight bodies are not authorized to oversee sheriff's departments. These bills provide that a law-enforcement officer who is subject to a binding disciplinary determination may file a grievance requesting a final hearing pursuant to the locality's local grievance procedures. The bills also provide that a retired law-enforcement officer may serve on the law-enforcement civilian oversight body as an advisory, nonvoting ex officio member. The bills were adopted during the 2020 Special Session but had a delayed effective date of July 1, 2021.

HB 1903 (Carr) Reduction of speed limits. This bill authorizes local governing bodies to reduce the speed limit to less than 25 miles per hour, but not less than 15 miles per hour, in a business district or residence district. A "residence district" is defined in Virginia Code § 46.2-100 to mean "the territory contiguous to a highway, not comprising a business district, where 75 percent or more of the property abutting such highway, on either side of the highway, for a distance of 300 feet or more along the highway consists of land improved for dwelling purposes, or is occupied by dwellings, or consists of land or buildings in use for business purposes, or consists of territory zoned residential or territory in residential subdivisions created under [the State planning, zoning, and subdivision laws]."

SB 1406 (Ebbin)/ HB 2312 (Herring) Marijuana; legalization; retail sales; penalties. These bills eliminate criminal penalties for simple possession of up to one ounce of marijuana by persons 21 years of age or older, modifies several other criminal penalties related to marijuana, and imposes limits on dissemination of criminal history record information related to certain marijuana offenses. Effective July 1, 2021, it became legal to possess up to one ounce of marijuana and to grow up to four marijuana plants per household. Retail sales will not be allowed to start until January 1, 2024. Subject to reenactment by the 2022 General Assembly, localities will be enabled to

impose local taxes on retail sales, regulate the hours retail sales can occur, and regulate or prohibit the public use and possession of marijuana on school grounds or in parks, playgrounds, public streets, or sidewalks. Other portions of the legislation are also subject to reenactment by the 2022 General Assembly.

Comment: More in-depth analysis of the legislation affecting the powers of the County will be required if the legislation is reenacted by the 2022 General Assembly.

Schools

HB 1909 (Subramanyam) Certain school board property; establishment of gun-free zone permitted. This bill permits any school board to deem any non-school zone building or property that it owns or leases where employees of the school board are regularly present for the purpose of performing their official duties as a gun-free zone and prohibit any individual from knowingly possessing, purchasing, transferring, carrying, storing, or transporting firearms, ammunition, or components or combination thereof while the individual is upon the property, except certain individuals such as law-enforcement officers and qualified retired law-enforcement officers.

Comment: This legislation extends the authority of school boards to prohibit firearms on school board-owned properties such as administrative offices that are not located on school sites, which are covered by different enabling authority in Virginia Code § 18.2-308.1. The legislation is similar to the amendments to Virginia Code § 15.2-915 in 2020, which enabled localities to restrict firearms in their buildings, parks, recreation and community centers, and other specific locations.

Taxation

SB 1398 (Norment) Retail sales and transient occupancy taxes on room rentals. This bill provides that retail sales and hotel taxes on transient room rentals must be computed based on the total charges or the total price paid for the use or possession of the room. For those cases in which a hotel or similar establishment contracts with an intermediary to facilitate the sale of the room and the intermediary charges the customer for the room and the facilitation efforts, the bill requires the intermediary to separately state the taxes on the bill or invoice provided to the customer and to collect the taxes based upon the total charges or the total price paid for using or possessing the room. The bill requires an amount equal to the estimated state sales tax revenue generated from the tax on accommodations fees to be appropriated to the Virginia Tourism Authority each fiscal year to be used for promoting tourism.

Comment: Under current law, no sales or transient occupancy tax is levied on any accommodations fee charged by accommodations intermediaries such as travel agencies and online travel booking services as part of the room rental transactions. Instead, the taxes are levied only upon the amount paid to the accommodations provider. The Fiscal Impact Statement for this legislation prepared by the Virginia Department of Taxation explains that for accommodations transactions using an intermediary, the intermediary is deemed the dealer making a retail sale of accommodations. The intermediary is required to collect the sales tax computed on the whole room charge. When the accommodations are at a hotel, the accommodations intermediary is required to remit the taxes collected on the accommodations fee to the Department of Taxation or the locality, as applicable, and any remaining tax to the hotel, which the hotel would then be required to remit to the Department of Taxation or the locality, as applicable. If the accommodations are not a hotel, the accommodations intermediary must remit the sales tax collected on the entire amount of the transaction to the Department of Taxation and the occupancy tax collected to the locality.