



TOWN COUNCIL Special Meeting & Executive Session

Cape Charles Civic Center

May 2, 2019

6:30 p.m.

At 6:30 p.m., Mayor William "Smitty" Dize, having established a quorum, called to order the Special Meeting and Executive Session of Town Council. In addition to Mayor Dize, present were Vice Mayor Bennett, Councilmen Bannon, Buchholz and Grossman and Councilwomen Burge and Holloway. Also, present were Town Manager Larry DiRe, Town Clerk Libby Hume, and Mr. Chris Ambrosio, legal counsel from Vandeventer Black, LLP. There were two members of the public in attendance.

PUBLIC COMMENTS (ON AGENDA ITEMS ONLY):

Town Clerk Libby Hume read an email from Mr. Andrew Follmer, of 300 Mason Avenue, Unit 2-E, into record. (Please see attached.)

There were no comments to be heard nor any other comments submitted in writing prior to the meeting.

ORDER OF BUSINESS:

A. *Legislative Update – Chris Ambrosio, Vandeventer Black, LLP:*

Mr. Ambrosio reviewed several bills which were passed by the General Assembly during their 2019 session which could be of interest to the Town: (Please see attached for full packet of information.)

- HB 1614-Stormwater Management Fund, local; locality by ordinance authorized to create.
- HB 1696-Killing of nuisance species; authorizes shooting, etc., from a stationary automobile.
- HB 1732-Treasurers, local; recordkeeping.
- HB 1772-Virginia Freedom of Information Advisory Council; advisory opinions, evidence in civil proceeding.
- SB 1431-Virginia Freedom of Information Act; training requirements for local elected officials.
- SB 1554-Virginia Freedom of Information Act; violations and civic penalties.
- HB 1777-Parking of certain vehicles; regulation in the Town of Cape Charles.
- HB 1913-Subdivision ordinance; sidewalks.
- HB 1966-Uniform Statewide Building Code; issuance of buildings permits.
- HB 2224-Zoning appeals, local board of; membership.
- HB2342-Conditional rezoning proffers; extensive changes to zoning provisions.
- HB 2689-Livestock; changes definition to include alpacas.
- HB 2752-Motorized skateboards or scooters; clarifies definitions, riding or driving on sidewalks, etc.
- SB 1301-Private collectors; delinquent taxes and other charges.
- SB 1430-Virginia Conflict of Interest and Ethics Advisory Council; duties, training requirement for officials.

Councilman Bannon asked Mr. Ambrosio regarding regulation of mobile kitchens. Councilwoman Burge suggested that it could be regulated under the Peddler's Ordinance. Mr. Ambrosio stated that he would check into the issue and get back to the Town.

B. *Historic District Review Board Member Appointments:*

Larry DiRe stated that there were currently two vacancies on the Historic District Review Board. In March 2019, an interview panel was formed consisting of Councilmen Bannon and Grossman

and Ms. Joan Natali as the citizen representative. Nine applicants were interviewed by the panel on April 3, 4, and 5. The interview panel recommended two candidates to fill the current vacancies and two alternates to fill future vacancies as follows:

- Kerry Shackelford – term expiring January 8, 2021
- Edward Eichman – term expiring January 8, 2020
- Edward Wells – first alternate
- Herbert Thom – second alternate

Vice Mayor Bennett thanked Councilmen Bannon and Grossman and Ms. Joan Natali for conducting the interviews.

Motion made by Vice Mayor Bennett, seconded by Councilwoman Holloway, to appoint Messrs. Kerry Shackelford and Edward Eichman to the Historic District Review Board and Messrs. Edward Wells and Herbert Thom as alternates to the Historic District Review Board as recommended by the interview panel. The motion was approved by unanimous vote.

C. Request for Tourism Zone Economic Stimulus Credits:

Larry DiRe stated that an application for Tourism Zone Economic Stimulus Credits from South Port Investors, LLC was received on April 24, 2019, detailing a request to support a restaurant located at 1011 Bayshore Road, also known as the “Harvey Building.” The proposed use cited in the application was a tourism-related business as defined in Section 24-4 of the Town Code.

Motion made by Councilman Grossman, seconded by Councilman Buchholz, to accept the staff recommendation to approve the application for Tourism Zone Economic Stimulus Credits from South Port Investors, LLC for a restaurant at 1011 Bayshore Road as submitted.

There was some discussion regarding the timing of the application and whether it was required for the business to wait until after their first year in business. Larry DiRe explained that the business owner could apply now and get the benefits after their first year in business after meeting the eligibility requirements set forth in Section 24-5 of the Town Code.

The motion was approved by unanimous vote.

D. Eastern Shore of Virginia Broadband Authority Update:

Larry DiRe stated that staff was informed by two Council members that a resident had a question about the Eastern Shore of Virginia Broadband Authority’s (ESVBA) possession of a “charter” to operate within the town boundary. ESVBA staff provided an update of approximately 20 minutes at the February 21, 2019 Town Council Regular Meeting, a video recording of which was posted on the town’s website. At the meeting, the ESVBA staff provided a brief history of their work in Cape Charles commencing approximately 2010 and including \$489,900 “community network construction” investment. ESVBA staff received little or no comments from Town Council during the presentation. Questions posed by Council at the time pertained to the anticipated service availability dates for extension of fiber into sections of the old town area. The ESVBA was not required to have a charter as they were not permitted to offer cable services, pursuant to Section 56-484.7:1 of the Code of Virginia. Larry DiRe offered to pursue the issue further, based on the comment read earlier in this meeting, if that was Council’s will.

There was much discussion regarding the ESVBA’s offering of internet services directly to the consumers as well as their pricing for commercial customers. By offering fiber internet services, the ESVBA was operating as a monopoly since the independent internet service providers had to pay the ESVBA’s regular commercial rates in order to provide services. The ESVBA’s business practice was compared to the Virginia ABC stores which operated within the state without competition.

Larry DiRe stated that he would contact Northampton County Administrator Charles Kolakowski to discuss this issue with him.

E. *Upcoming Work Session Topics:*

Larry DiRe stated that this staff report listed a number of topics identified by Council members over the last several months for future work sessions.

Mayor Dize suggested Council review and prioritize the topics with the plan to discuss one or two topics per meeting.

Councilman Grossman asked that two topics be added as follows: i) Capital improvement plan program; and ii) Historic District Review Board criteria and by-laws. He and Councilwoman Burge had been working on the process.

There was much discussion regarding the various topics as follows:

- (a) Animal Control was removed. The Town had an existing ordinance and staff could develop a process to bring to Council for review.
- (b) Parking Regulations-boat trailers, recreational vehicles, etc. This topic was removed from the list and Councilwoman Burge would work with Libby Hume to develop and ordinance for Council adoption.
- (c) Homestay Regulations was identified as the second priority and would be discussed at the June 6, 2019 meeting.
- (d) Harbor Management Companies – unsolicited presentations. This topic was identified as the first priority and the presentations would be scheduled for June 6, 2019.
- (e) Town Support to Cape Charles Main Street, Inc. was removed from the list. The FY 2020 budget included \$100K of financial support to the organization and Town staff also provides much support.
- (f) Develop Criteria/Application for Grants to Non-Profits was removed from the list. Staff would obtain the application used by Northampton County and work with Councilwoman Holloway to draft an application and develop criteria.
- (g) Issues under review by Planning Commission and/or Town Boards including ongoing preservation plan update, cottage overlay district in the harbor area, Historic District Review Board Criteria and By-laws. Some joint meetings would be scheduled with the appropriate boards as needed. Text amendments regarding the HDRB would be presented to Council at the May 16 regular meeting.
- (h) Capital Improvement Plan Program. Councilman Grossman was working on this project and his recommendations would be reviewed by Council in July.
- (i) HDRB criteria and by-laws. Councilman Grossman was working on this project and his recommendations had to be presented first to the HDRB, then to Council, potentially in July.

F. *FY 2020 Proposed Budget:*

Mayor Dize stated that this item would be removed from the agenda since the FY 2020 budget was finalized at the April 25, 2019 meeting. This agenda had been posted prior to the meeting.

Motion made by Vice Mayor Bennett, seconded by Councilman Buchholz, calling for a short recess before going into executive session. The motion was approved by unanimous vote.

The meeting recessed at 7:41 p.m. The members of the public and staff, with the exception of Larry DiRe, left the meeting.

At 7:51 p.m. Mayor Dize called the meeting back to order.

Motion made by Councilwoman Burge, seconded by Councilman Grossman, and unanimously approved to go into Closed Session in accordance with Section 2.2-3711-A of the Code of Virginia of 1950, as amended for the purpose of:

Paragraph 1: Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body.

Specifically: Town Manager Performance Evaluation

Motion made by Councilman Buchholz, seconded by Councilman Bannon, to return to open session. The motion was approved by unanimous vote.

Certification, to the best of each member's knowledge, that (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body. Roll call vote: Bannon, yes; Bennett, yes; Buchholz, yes; Burge, yes; Grossman, yes; Holloway, yes.

Motion made by Councilman Bannon, seconded by Councilman Grossman, to adjourn the Town Council Special Meeting and Executive Session. The motion was approved by unanimous vote.

The meeting adjourned at 8:37 p.m.

Mayor Dize

Town Clerk

**Comments and Information Submitted in Writing
May 2, 2019 Town Council Special Meeting**

Andrew Follmer, 300 Mason Avenue, Unit 2-E

Dear Council,

As quality internet service continues to grow in importance, the appeal of a fiber-to-home network throughout Town is obvious. However, it is important to recognize that ESVBA is expanding a monopoly that will inevitably reduce choice and increase costs for consumers in the future. Their current model, different from what is employed elsewhere in the Commonwealth, runs counter to the spirit, if not the letter, of the referenced Code, which covers more than cable television services as you have read.

This is an expansion of ESVBA's effort to squeeze out private-sector service providers, an effort that is well underway since their decision to enter the retail market and compete directly in markets with multiple private providers whom they regulate and to whom they sell access to the taxpayer funded "middle-mile" broadband infrastructure on the Shore. This is a non-profit government authority earning profits from its middle-mile wholesale business by charging its competitors multiples of market rates available in other markets and using those profits to subsidize its retail operation and undercut private sector competitors on price, rather than directing those efforts and resources toward reaching underserved areas. In fact, such efforts have been harmed by ESVBA's entrance to this market, as a \$3 million USDA broadband grant that would have served 3,300 households in Accomack and Northampton Counties was disqualified due to ESVBA entering the retail market in a portion of the planned grant area.

The ESVBA is tax-exempt and does not pay the same tax its private competitors do on sales, property, and income. Their vehicles bear license plates that say "for local government use only" and are purchased at a government-negotiated discount through the GSA schedule. The authority proudly reminds us that it repaid the State's initial investment, but no such interest-free loan is available to its private competitors, nor is ESVBA's ability to obtain cheap financing through bond offerings guaranteed by both counties.

Unlike the federally-funded "middle mile" infrastructure, the fiber-to-home network to be built in Cape Charles will not be available for re-sale by private sector providers. They are being forced to overpay for wholesale broadband access to finance a network that will out-compete them and push them out of the market.

This is not what Virginia had in mind when it established the ESVBA. In contrast to the Shore, Southwestern Virginia has benefitted from public-private partnerships created by Mid-Atlantic Broadband (MBC) that have resulted in consistent increases in broadband network expansion, including significant private investment. With MBC providing low cost infrastructure, private ISPs have been able to justify the investment required to expand access to rural underserved areas.

Thank you for your attention.

best,

Andrew Follmer
300 Mason Ave, Unit 2-E, Cape Charles

VANDEVENTER BLACK LLP

ATTORNEYS AT LAW
MEMORANDUM

To: Larry DiRe, Town Manager
From: Michael L. Sterling, Esq.
Christopher Ambrosio, Esq.
Date: May 2, 2019
Re: Town of Cape Charles Legislative Review 2019

Town of Cape Charles
2019 Legislative Summary

The following summary includes legislation approved by the Governor or enacted. The summary begins with a list of House Bills and continues with Senate Bills. The summary includes legislation that applies to the Town, and other legislation that may be of general interest. In a few instances we have included excerpts from the legislation.

This is not a complete list of all legislation that may impact the Town. Further, the official summaries from the Virginia's Legislative Information System (LIS) are not always accurate, so for further information you should review the actual legislation. <https://lis.virginia.gov/cgi-bin/legp604.exe?191+men+BIL>.

House Bills

HB 1614 Stormwater Management Fund, local; locality by ordinance authorized to create.

Local Stormwater Management Fund. Authorizes a locality by ordinance to create a local Stormwater Management Fund consisting of appropriated local moneys for the purpose of granting funds to an owner of private property or a common interest community for stormwater management and erosion prevention on previously developed lands. This bill is identical to SB 1248.

CHAPTER 344

An Act to amend the Code of Virginia by adding a section numbered 15.2-2114.01, relating to a local Stormwater Management Fund.

[H 1614]

Approved March 12, 2019

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 15.2-2114.01 as follows:

§ 15.2-2114.01. Local Stormwater Management Fund; grant moneys.

Any locality may by ordinance create a local Stormwater Management Fund consisting of appropriated local moneys for the purpose of granting funds to an owner of private property or a common interest community for stormwater management and erosion prevention on previously developed lands. Grants from such fund shall be used only for the construction, improvement, or repair of a stormwater management facility or for erosion and sediment control.

HB 1629 Virginia Public Procurement Act; request for proposals, publication.

Virginia Public Procurement Act; request for proposals; publication. Removes the requirement for newspaper publication of Requests for Proposals for professional services. The bill also requires a local public body to post a Request for Proposal on the Department of General Services' central electronic procurement website when it elects not to publish such Request for Proposal in a newspaper of general circulation in the area in which the contract is to be performed.

HB 1649 Boundary agreement, local; locality allowed to attach to their petitions to circuit court a GIS map.

Local boundary agreements. Allows all localities, in adopting a voluntary boundary agreement, to attach to their petitions to the circuit court a Geographic Information System (GIS) map depicting the boundary change. Under current law, such use of a GIS map is permitted only regarding the boundaries of certain named localities. This bill is identical to SB 1594.

HB 1650 Lottery; disclosure of identity of winners.

Virginia Lottery Law; disclosure of a lottery winner's identity. Prohibits the Virginia Lottery from disclosing information about individual winners whose prize exceeds \$10 million, and exempts such information from disclosure under the Freedom of Information Act (FOIA), unless the winner consents to disclosure. Under FOIA, disclosure of the winner's name, hometown, and amount won is currently mandatory. This bill is identical to SB 1060.

HB 1655 Real property tax; exemption for disabled veterans, surviving spouse's ability to move.

Real property tax exemption for disabled veterans; surviving spouses; ability to move to a different residence. Enacts as statutory law an amendment to subdivision (a) of Section 6-A of Article X of the Constitution of Virginia that was adopted by the voters on November 6, 2018, which applies the real property tax exemption for the surviving spouse of a disabled veteran to such spouse's principal place of residence regardless of whether such spouse moves to a different residence. The provisions of the bill would apply to taxable years beginning on and after January 1, 2019. The bill makes technical corrections related to the real property tax exemptions for surviving spouses of members of the armed forces killed in action and surviving spouses of certain persons killed in the line of duty. This bill is identical to SB 1270.

applicant does so, the local building department shall be encouraged, but not required, to limit its review of the revised application to only those portions of the application that were previously deemed inadequate and that the applicant has revised.

HB 2056 Law-enforcement officials; to knowingly, with intent to mislead an official, giving false reports.

False information and hoax criminal activities; penalty. Makes it a Class 1 misdemeanor for any person to knowingly, with the intent to mislead a law-enforcement agency, cause another to give a false report to any law-enforcement official by publicly simulating a violation of Chapter 4 (§ 18.2-30 et seq.) (Crimes Against the Person) or Chapter 5 (§ 18.2-77 et seq.) (Crimes Against Property) of Title 18.2. This bill is identical to SB 1031.

HB 2060 Real estate with delinquent taxes or liens; appointment of special commissioner, etc.

Real estate with delinquent taxes or liens; appointment of special commissioner; increase required value. Increases the required assessed value of property for the purpose of a locality appointing a special commissioner to convey property with delinquent taxes or liens to the locality in lieu of sale at public auction (i) from \$100,000 to \$150,000 in Norfolk, Richmond, Hopewell, Newport News, Petersburg, Fredericksburg, and Hampton and (ii) from \$50,000 to \$75,000 in all other localities.

HB 2141 Local service districts; broadband and telecommunications services.

Local services districts; broadband and telecommunications services. Authorizes a local governing body, with respect to a service district, to contract with a nongovernmental broadband service provider who will construct, maintain, and own communications facilities and equipment required to facilitate delivery of last-mile broadband services to unserved areas of the service district, provided that the locality documents that less than 10 percent of residential and commercial units within the project area are capable of receiving broadband service at the time the construction project is approved by the locality.

HB 2150 Real property tax; exemption for the elderly and disabled, improvements to a dwelling.

Real property tax exemption for the elderly and disabled; improvements to a dwelling. Provides that, for purposes of the real property tax exemption for the elderly and disabled, certain improvements to exempt land and the land such improvements are situated on shall be included as part of the dwelling and exempt from tax. This bill is identical to SB 1196.

HB 2182 DGS; surplus property, opportunity for economic development entities to purchase.

Department of General Services; surplus property; opportunity for economic development entities to purchase prior to public sale. Provides that prior to offering surplus property for sale to the public, the Department of General Services (the Department) shall notify the chief administrative officer of the locality within which the property is located as well as any economic development entity for such locality of the pending disposition of such property. The bill provides that the chief administrative officer or local economic development entity shall have up to 180 days from the date of such notification to submit a proposal to the Department for the use by the locality or the local economic development entity of such property in conjunction with a bona fide economic development activity. The bill requires the Department to review such proposal and provides that if the Department determines that such proposal is viable and could benefit the Commonwealth, the Department may negotiate with the chief administrative officer or the local economic development entity for the sale of such property to the locality or economic development entity. This bill is identical to SB 1681.

HB 2224 Zoning appeals, local board of; membership.

Local board of zoning appeals; certain towns; membership. Authorizes the circuit court for a town with a population of 3,500 or less to appoint either three, five, or seven residents of the locality to the board of zoning appeals. Current law requires appointment to local zoning boards of appeals of either five or seven residents of the locality.

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2308 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc.

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws, shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, *or in a town with a population of 3,500 or less, either three, five, or seven residents of the locality*, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated

HB 2420 Nonconforming use; a wall built on residential property shall be grandfathered as a valid use, etc.

Grandfathering certain nonconforming use. Provides that a wall built on residential property shall be grandfathered as a valid nonconforming use, and the wall shall not be subject to removal solely due to such nonconformity, in any instance where (i) a residential property owner sought local government approval prior to 2008 for construction of a wall on the owner's property, (ii) the property owner was informed by a local official that such wall required no permit and that the structure would comply with the zoning ordinance, (iii) the wall was thereafter constructed, (iv) the locality subsequently informed the property owner that the wall was illegal, and (v) such a wall, had it been constructed as described in clauses (ii) and (iii) after 2017, would be considered a valid nonconforming use not subject to removal.

HB 2440 Intangible personal property; classification and exemption of certain business property.

Intangible personal property; classification and exemption of certain business property. Classifies as intangible property, and exempts from taxation, personal property that is employed in a trade or business, has an original cost of less than \$25, and is not classified as machinery and tools, merchants' capital, or short-term rental property.

HB 2473 Minimum wage; exemptions.

Minimum wage; exemptions. Eliminates the exemptions to Virginia's minimum wage requirements for newsboys, shoe-shine boys, babysitters who work 10 hours or more per week, ushers, doormen, concession attendants, and cashiers in theaters. The measure contains technical amendments. This bill is identical to SB 1079.

HB 2569 Family day homes; zoning permits.

Regulation of child-care services and facilities in certain counties. Provides that if a zoning administrator in a locality that has, by ordinance, allowed a zoning administrator to use an administrative process to issue zoning permits for family day homes receives a written objection to an application for a permit to operate a family day home within 30 days of notification of such application, the zoning administrator shall issue the permit if the family day home meets all the other criteria for issuance of the permit or may deny the permit, or, if required to do so by local ordinance, refer the permit to the local governing body for consideration. This bill is identical to SB 1094.

HB 2621 Rezoning and site plan approval; decommissioning solar energy equipment, etc., bonding provisions.

Site plan approval; decommissioning certified solar energy equipment, facilities, or devices. Requires a locality, as part of the local legislative approval process or as a condition of approval of a site plan, to require an owner, lessee, or developer of real property to enter into a written agreement to decommission solar energy equipment, facilities, or devices upon certain terms and conditions, including right of entry by the locality and financial assurance. This bill is identical to SB 1091.

HB 2637 Loans and grants for agricultural best management practices; riparian buffers.

Loans and grants for agricultural best management practices; riparian buffers. Authorizes the State Water Control Board to issue loans and grants from the Virginia Water Facilities Revolving Fund for the construction, renovation, improvement, or equipping of facilities or structures to implement agricultural best management practices to prevent pollution of state waters. Current law authorizes the Board to only issue loans for the construction of such facilities. The bill includes among the types of facilities or structures for which a loan or grant may be issued riparian buffers planted in trees and maintained in accordance with the terms and conditions of the loan or grant.

HB 2656 Law-Enforcement Officers Procedural Guarantee Act; amends definition of law-enforcement officer.

Law-Enforcement Officers Procedural Guarantee Act; definition of law-enforcement officer. Amends the definition of "law-enforcement officer" under the Law-Enforcement Officers Procedural Guarantee Act (the Act) to include those persons who are nonprobationary officers of the police department, bureau, or force of any political subdivision or the campus police department of any public institution of higher education of the Commonwealth where such department, bureau, or force has three or more law-enforcement officers. Currently, such department, bureau, or force is required to have at least 10 law-enforcement officers for purposes of this definition.

HB 2689 Livestock; changes definition to include alpacas.

Livestock definition; alpaca. Adds animals of the genus Vicugna, which includes alpacas, to the definition of "livestock" in the Domestic Animals law. Under current law, the definition includes animals of the genus Lama, which includes llamas but does not include alpacas.

Motorized skateboards or scooters; operation; local authority. Authorizes localities to regulate the operation of companies providing motorized skateboards or scooters for hire. The bill changes the definition of motorized skateboard or scooter by (i) removing the requirement that such device have no seat and requiring that the device be designed to allow a person to stand or sit, (ii) removing the maximum power limits for such device and providing that the device may be powered in whole or in part by an electric motor, (iii) providing that the device has a speed of no more than 20 miles per hour, and (iv) providing that such device weighs less than 100 pounds. The bill makes consistent the operational requirements for motorized skateboards or scooters and similar devices, including (a) allowing motorized skateboards and scooters to be driven on sidewalks, (b) requiring motorized skateboards and scooters driven on a roadway to be driven as close to the right curb as is safely practicable, (c) prohibiting the operation of motorized skateboards or scooters on any Interstate Highway System component, and (d) requiring operators of motorized skateboards and scooters to give hand signals and have lights on such devices. The bill prohibits operating a motorized skateboard or scooter at a speed faster than 20 miles per hour. Certain provisions of this bill have a delayed effective date of January 1, 2020.

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-100, 46.2-800, 46.2-849, 46.2-903, 46.2-904, 46.2-908.1, 46.2-1015, 46.2-1041, and 46.2-1081 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 13 of Title 46.2 a section numbered 46.2-1315 as follows:

§ 46.2-100. Definitions.

As used in this title, unless the context requires a different meaning:

"Motorized skateboard or ~~foot-scooter scooter~~" means every vehicle, regardless of the number of its wheels in contact with the ground, that (i) ~~has no seat, but is designed to be stood upon by the operator~~ is designed to allow an operator to sit or stand, (ii) has no manufacturer-issued vehicle identification number, and (iii) is powered in whole or in part by an electric motor ~~having an input of no more than 1,000 watts or a gasoline engine that displaces less than 36 cubic centimeters~~, (iv) weighs less than 100 pounds, and (v) has a speed of no more than 20 miles per hour on a paved surface when powered solely by the electric motor.

"Motorized skateboard or ~~foot-scooter scooter~~" includes vehicles with or without handlebars but does not include "electric personal assistive mobility devices."

§ 46.2-1315. Powers of localities to regular use of motorized skateboards or scooters, bicycles, or electric power-assisted bicycles for hire.

Any county, city, town, or political subdivision may (1) by ordinance regulate or (ii) by any governing body action or administrative action establish a demonstration project or pilot program regulating the operation of motorized skateboards or scooters, bicycles, or electric power-assisted bicycles for hire, provided that such regulation or other governing body or administrative action is consistent with this title. Such ordinance or other governing body or administrative action may require persons offering motorized skateboards or scooters, bicycles, or electric power-assisted bicycles for hire to be licenses, provided that on or after January 1, 2020, in the absence of any licensing ordinance, regulation, or other action, a person may offer motorized skateboards or scooters, bicycles, or electric power-assisted bicycles for hire.

HB 2783 Living shorelines; loans to businesses.

Living shorelines; loans to businesses. Authorizes a local government that has a funding program that provides low-interest loans or other incentives for the establishment of living shorelines to provide such incentives to businesses. The bill includes bed-and-breakfast operations, campgrounds, restaurants, and businesses that use working waterfronts among the eligible businesses, and it requires such a business to be located within a locality that is in the Rural Coastal Virginia Community Enhancement Authority in order to be eligible for loan funding. Current law authorizes the provision of such incentives only to individual residents of the Commonwealth.

Senate Bills

SB 1180 Virginia Freedom of Information Act; definition of trade secret.

Virginia Freedom of Information Act; definition of trade secret. Defines the term "trade secret," for the purposes of the Virginia Freedom of Information Act, as meaning the same as that term is defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.). This bill is a recommendation of the Virginia Freedom of Information Advisory Council.

SB 1182 Virginia Freedom of Information Act; meetings held through electronic communication means.

Virginia Freedom of Information Act; meetings held through electronic communication means. Clarifies that certain requirements of current law regarding participation in public meetings through electronic communication means do not apply to meetings held to address a state of emergency declared by the Governor, specifically the requirements that public bodies (i) adopt a written policy regarding participation by electronic communication, (ii) have a quorum of a public body physically assembled at a primary or central location, and (iii) make arrangements for the voice of any member participating from a remote location to be heard by all persons at the primary or central location. This bill is a recommendation of the Virginia Freedom of Information Advisory Council.

SB 1233 Administration of government; prohibition on use of certain products and services.

Administration of government; prohibition on the use of certain products and services. Prohibits public bodies from using hardware, software, or services that have been prohibited by the U.S. Department of Homeland Security for use on federal systems. The bill also requires the Chief Information Officer of the Commonwealth to promptly notify all public bodies of such prohibited hardware, software, and services.

SB 1301 Private collectors; delinquent taxes and other charges.

Private collectors; delinquent taxes and other charges. Allows a local treasurer to employ private collections agents to assist with the collection of delinquent amounts due other than delinquent local taxes. Current law allows only for the collection of delinquent taxes by private collections agents.

SB 1367 Dogs running at large in packs; local ordinance, civil penalty.

Dogs running at large in packs; local ordinance; civil penalty. Requires a locality that adopts an ordinance to prohibit the running at large of all or any category of dogs to exempt dogs used for hunting and requires such locality to include in such ordinance a civil penalty in an amount established by the locality not to exceed \$100 per dog for the owner or custodian of any dog found running at large in a pack. The bill requires that such civil penalties be deposited by the local treasurer in the dog and cat license fund, which is used to support animal control.

SB 1421 Eminent domain; entry upon private property, calculation of just compensation, damages.

Eminent domain; entry upon private property; calculation of just compensation; damages. Makes various changes to provisions related to entry upon private property in an eminent domain proceeding, including (i) requiring that the number of persons for whom permission to inspect the premises is sought be included in a request for permission to inspect private property for the purposes of a project wherein the power of eminent domain may be exercised; (ii) requiring the notice of intent to enter the property to include all of the information contained in the request for permission to inspect the property; (iii) requiring the court to award fees for up to three experts or as many experts as are called by the petitioner at trial, whichever is greater, if the petitioner damages the property during its entry; (iv) removing the requirement that the damage must be done maliciously, willfully, or recklessly for the owner to be reimbursed for his costs; and (v) removing the option that the owner may be reimbursed for his costs if the court awards the owner actual damages in an amount 30 percent or more greater than the petitioner's final written offer made no later than 30 days after the filing of an answer in circuit court or the return date in general district court.

The bill also provides the method by which just compensation for the taking of property in an eminent domain proceeding is calculated. The bill provides that the body determining just compensation shall ascertain the value of the property to be taken and the damages, if any, that may accrue to the residue beyond the specific enhancement in value, if any. The bill further outlines the considerations that may be used to determine the market value of the property before the taking and the residue after the taking.

Finally, the bill allows a person to recover damages resulting from reformation, alteration, revision, amendment, or invalidation of a certificate in an eminent domain proceeding. The bill provides that an owner may recover costs incurred if the taking of land in an eminent domain proceeding is abandoned, in full or in part. The bill does not apply to condemnation proceedings in which the petitioner filed, prior to July 1, 2019, a petition in condemnation or a certificate of take or deposit.

SB 1430 Virginia Conflict of Interest and Ethics Advisory Council; duties, training requirement for officials.

Conflict of interest; duties of Virginia Conflict of Interest and Ethics Advisory Council; training requirement. Requires all local elected officials to take training on the provisions of the State and Local Government Conflict of

applicable standards of a locality; and (iii) construction, improvement, or expansion of buildings, structures, parking, and other facilities directly related to transit.

"Residentially zoned property" means property zoned or proposed to be zoned for either single-family or multifamily housing.

"Small area comprehensive plan" means that portion of a comprehensive plan adopted pursuant to § [15.2-2223](#) that is specifically applicable to a delineated area within a locality rather than the locality as a whole.

B. Notwithstanding any other provision of law, general or special, no ~~locality~~ *local governing body* shall (i) ~~request or accept~~ *require* any unreasonable proffer, as described in subsection C, in connection with a rezoning or a proffer condition amendment as a condition of approval of a new residential development or new residential use or (ii) deny any rezoning application or proffer condition amendment for a new residential development or new residential use where such denial is based in whole or in part on an applicant's failure or refusal to submit an unreasonable proffer or proffer condition amendment.

C. Notwithstanding any other provision of law, general or special, ~~(i) as used in this chapter,~~ a proffer, or proffer condition amendment, whether onsite or offsite, offered voluntarily pursuant to § [15.2-2297](#), [15.2-2298](#), [15.2-2303](#), or [15.2-2303.1](#), shall be deemed unreasonable unless it:

1. ~~It addresses an impact that is specifically attributable to a proposed new residential development or other new residential use applied for; and (ii) an offsite proffer shall be deemed unreasonable pursuant to subdivision (i) unless~~

2. ~~If an offsite proffer, it addresses an impact to an offsite public facility, such that (a) the new residential development or new residential use creates a need, or an identifiable portion of a need, for one or more public facility improvements in excess of existing public facility capacity at the time of the rezoning or proffer condition amendment and (b) each such new residential development or new residential use applied for receives a direct and material benefit from a proffer made with respect to any such public facility improvements. For the purposes of this section, a~~ A locality may base its assessment of public facility capacity on the projected impacts specifically attributable to the new residential development or new residential use.

D. *Notwithstanding the provisions of subsection C:*

1. *An applicant or owner may, at the time of filing an application pursuant to this section or during the review development process, submit an offsite proffer that the owner and applicant, if different, deems reasonable and appropriate, as conclusively evidenced by the signed proffers.*

2. *Failure to submit proffers as set forth in subdivision 1 shall not be a basis for the denial of any rezoning or proffer condition amendment application.*

E. Notwithstanding any other provision of law, general or special:

1. Actions brought to contest the action of a ~~locality~~ *local governing body* in violation of this section shall be brought only by the aggrieved applicant or the owner of the property subject to a rezoning or proffer condition amendment pursuant to subsection F of § [15.2-2285](#), *provided that the applicant objected in writing to the governing body regarding a proposed condition prior to the governing body's grant or denial of the rezoning application.*

2. In any action in which a ~~locality~~ *local governing body* has denied a rezoning or an amendment to an existing proffer and the aggrieved applicant proves by a preponderance of the evidence that it refused or failed to submit an unreasonable proffer or proffer condition amendment that ~~it has proven was suggested, requested, or required by the locality local governing body in violation of this section,~~ the court shall presume, absent clear and convincing evidence to the contrary, that such refusal or failure was the controlling basis for the denial.

3. In any successful action brought pursuant to this section contesting an action of a ~~locality~~ *local governing body* in violation of this section, the applicant may be entitled to an award of reasonable attorney fees and costs and to an order remanding the matter to the governing body with a direction to approve the rezoning or proffer condition amendment without the inclusion of any unreasonable proffer *or to amend the proffer to bring it into compliance with this section.* If the ~~locality~~ *local governing body* fails or refuses to approve the rezoning or proffer condition amendment, *or fails or refuses to amend the proffer to bring it into compliance with this section,* within a reasonable time not to exceed 90 days from the date of the court's order to do so, the court shall enjoin the ~~locality~~ *local governing body* from interfering with the use of the property as applied for without the unreasonable proffer. Upon remand to the local governing body pursuant to this subsection, the requirements of § [15.2-2204](#) shall not apply.

~~E-F.~~ The provisions of this section shall not apply to any new residential development or new residential use occurring within any of the following areas: (i) an approved small area comprehensive plan in which the delineated area is designated as a revitalization area, encompasses mass transit as defined in § [33.2-100](#), includes mixed use development, and allows a density of at least 3.0 floor area ratio in a portion thereof; (ii) an approved small area comprehensive plan that encompasses an existing or planned Metrorail station, or is adjacent to a Metrorail station located in a neighboring locality, and allows additional density within the vicinity of such existing or planned station; or (iii) an approved service district created pursuant to § [15.2-2400](#) that encompasses an existing or planned Metrorail station.

~~F-G.~~ This section shall be construed as supplementary to any existing provisions limiting or curtailing proffers or proffer condition amendments for new residential development or new residential use that are consistent with its terms and shall be

construed to supersede any existing statutory provision with respect to proffers or proffer condition amendments for new residential development or new residential use that are inconsistent with its terms.

H. Notwithstanding any provision in this section to the contrary, nothing contained herein shall be deemed or interpreted to prohibit or require communications between an applicant or owner and the locality. The applicant, owner, and locality may engage in pre- and post-filing discussions regarding the potential impacts of a proposed new residential development or new residential use on public facilities as defined in subsection A and on other public facilities of the locality, and potential voluntary onsite or offsite proffers, permitted under subsection C and subsection D, that might address those impacts. Such verbal discussions shall not be used as the basis that an unreasonable proffer or proffer condition amendment was required by the locality. Furthermore, notwithstanding any provision in this section to the contrary, nothing contained herein shall be deemed or interpreted to prohibit presentation, analysis, or discussion of the potential impacts of new residential development or other new residential use on the locality's public facilities.

2. That the third enactment of Chapter 322 of the Acts of Assembly of 2016 is repealed.

3. That this act shall be effective as to any application for a rezoning filed on or after July 1, 2019, or for a proffer condition amendment amending a rezoning which was filed on or after July 1, 2019, or to any then pending rezoning application in which the applicant elects to proceed hereunder, by amendment of that pending application.

4. That an applicant with a pending application for a rezoning or proffer condition amendment that was filed prior to July 1, 2016, may continue to proceed under the law as it existed prior to that date, and an applicant with a pending rezoning application filed after July 1, 2016, but before July 1, 2019, or proffer condition amendment application amending a rezoning for which the application was filed after July 1, 2016, but before July 1, 2019, may continue to proceed under the law as it existed during that period.