City of Alexandria, Virginia

MEMORANDUM

DATE: SEPTEMBER 6, 2022

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: JAMES F. PARAJON, CITY MANAGER /s/

FROM: SARAH TAYLOR, LEGISLATIVE DIRECTOR

DOCKET TITLE:
General Assembly Update - Permissive Local Authority From 2022 General Assembly Session.

ISSUE: Permissive Authority Granted by 2022 General Assembly Action.

RECOMMENDATION: That City Council review the following to give staff guidance as to what permissive authority it wishes to exercise.

BACKGROUND: Virginia courts recognize no inherent local government powers; this is the legal doctrine known as "Dillon's Rule." As a Dillon Rule state, the governing authority of Virginia localities is limited to what is expressly granted to them by state statute or written in their municipal charter. Therefore, each session of the General Assembly, bills may be passed and signed into law which grant localities certain governing authority; this authority may be mandatory or permissive. Once these laws go into effect and this authority is granted, it falls to the locality to implement whatever mandatory authority is required of them and determine whether they want to take advantage of any permissive authority.

During the 2022 session of the General Assembly, localities were granted permissive authority via fifteen (15) new laws in a number of subject areas. Subject matter experts in City Departments that would be impacted by new, permissive authority have provided guidance to Council for their consideration as to what permissive authority it wishes to exercise.

DISCUSSION: For ease of use, the permissive authority granted to the City Council by the General Assembly in 2022 is grouped by subject matter and contains analysis of the new authority and staff's recommendation whether City Council should enact an ordinance pursuant to the laws below.

1. *Bill Number*: HB 267/SB 12

Short Title: Local Taxes; surplus revenues

Bill Description: Grants localities permissive authority to return surplus personal property tax revenues to taxpayers. Under current law, localities may return only surplus real property tax revenues.

Staff Analysis: Council does not need to take action on this legislation. Rather than return surplus revenue, the City deals with excessive NADA car valuations by applying an assessment ratio to lower actual personal property tax bills. Only a few jurisdictions opted to use this surplus refund authority; most used either an assessment ratio or a tax decrease.

2. *Bill Number*: HB 957

Short Title: Tax rates; Real property of applicable surviving military spouses may be taxed differently

Bill Description: Provides that beginning with taxable year 2022, any locality may declare real property owned by a surviving spouse of a member of the Armed Forces of the United States who died in the line of duty with a line of duty determination from the U.S. Department of Defense, where such death was not the result of criminal conduct, and where the spouse occupies the real property as his principal place of residence and does not remarry, a separate class of property for local taxation of real property that may be taxed at a different rate than that imposed on the general class of real property, provided that the rate of tax is greater than zero and does not exceed the rate of tax on the general class of real property.

Staff Analysis: No immediate Council action is needed. This legislation allows localities to adopt a lower real estate tax rate - not a complete exemption - for properties owned by the surviving spouse of a member of the Armed Forces who died in the line of duty.

Inasmuch as this legislation pertains to the setting of our annual tax rate, consideration of this issue as part of the FY 2024 budget process next spring is the most appropriate venue. Staff will work to obtain any available additional information of the potential fiscal impact for Council's consideration at that time.

3. *Bill Number*: HB 1239/SB 771

Short Title: Personal property tax; classification; emergency

Bill Description: Authorizes localities to classify for rate purposes certain vehicles that, under current law, may be classified only for valuation purposes, including certain automobiles, trucks, motor vehicles for use by the handicapped, motorcycles, mopeds, all-terrain vehicles, off-road motorcycles, campers, and other recreational vehicles. The bill specifies that its provisions shall apply only to taxable years beginning on or after January 1, 2022, but before January 1, 2025.

Staff Analysis: No Council action needed. Legislation allows localities to set a separate tax rate for vehicles only, differentiating them from business personal property taxation. Formerly, business personal property could not be taxed at a higher rate than vehicles. This legislation was passed to deal with

excessively high NADA valuations due to the effects of the pandemic. The City instead used an assessment ratio to lower actual personal property tax bills.

Unless the General Assembly amends this legislation before 2025, localities that use this authority will have to either raiser their personal property tax rates or lower their business personal property tax rates at that time, as this legislation sunsets on January 1, 2025.

4. *Bill Number*: SB 648

Short Title: Real property tax; exemption for the elderly and handicapped

Bill Description: Provides that any locality may by ordinance accept documentation establishing eligibility for the real property tax exemption for the elderly and handicapped on a rolling basis throughout the year. Current law states that localities shall accept such documentation after January 1 but before April 1 or a later date fixed by ordinance.

Staff Analysis: No Council action needed. Prior Council action allows hardship and late applications for first time filers; Finance effectively already accepts applications throughout the year and, per ordinance, accept them up to April 15th of the following year.

5. *Bill Number*: HB 911

Short Title: Local credits for approved local volunteer activities

Bill Description: Enables localities, by ordinance, to provide a credit against taxes and fees imposed by the locality to an individual who provides approved volunteer services in the locality. As defined in the bill, "approved volunteer services" includes (i) volunteer first responders or (ii) individuals who perform volunteer services to a nonprofit organization or to the locality, if such services are approved by the locality. The bill specifies that the credit shall not be applied against any property taxes or payments in lieu of property taxes. The bill gives localities discretion to determine which taxes or fees are permissible uses of the credit and which services qualify for the credit.

Staff Analysis: The volunteers to whom this tax/fee credit could apply are limited; in addition, the taxes against which these credits apply are limited. They specifically exclude real and personal property taxes, so would apply to taxes such as BPOL taxes, meals tax, transient occupancy tax, admissions tax, cigarette tax, and miscellaneous licenses and fees under Title 15.2 like refuse fees and residential parking fees.

If Council wishes to proceed, enactment will require an ordinance and certification of volunteer hours. The law also provides Council with substantial authority to determine the terms of any such tax credit, within the above limitations.

6. *Bill Number*: HB 368

Short Title: Refunds of local taxes; authority of treasurer

Bill Description: Increases from $5,000 to $10,000 the maximum amount that the governing body of a locality may authorize its treasurer to approve and issue for a refund of taxes paid as a result of an erroneous tax assessment.

Staff Analysis: No Council action needed. This item is self-executing and already comports with existing City practice.

7. *Bill Number*: HB 199

Short Title: Land preservation program; special assessment

Bill Description: Allows a locality, by ordinance, to provide that a parcel of real property shall not be removed from the land use program for delinquent taxes if such taxes are paid no later than December 31 of the year in which the taxes became delinquent. The bill further provides that no parcel of real property shall be removed from the land use program for delinquent taxes if (i) such taxes become delinquent during a state of emergency declared by the Governor, (ii) the treasurer determines that the emergency has caused hardship for the taxpayer, and (iii) the taxes are paid no later than 90 days after the original deadline.
Staff Analysis: No action necessary. Self-executing. Already comports with existing City practice.

Staff Analysis: No Council action needed. The authority granted in this new law pertains only to land use real estate assessments; e.g., open space, agricultural, forest properties. We have none of this kind of property in the City, as land use real estate assessments are geared more toward rural localities and localities with substantial rural areas like Loudoun and Fauquier.

8. *Bill Number*: HB 1087

Short Title: Solar photovoltaic projects; local taxation for projects less than five megawatts

Bill Description: Provides that generating equipment of solar photovoltaic projects five megawatts or less shall be taxable by a locality, at a rate determined by such locality, but shall not exceed the real estate rate applicable in that locality, and that the exemption shall be as follows: 80 percent of the assessed value in the first five years in service after commencement of commercial operation, 70 percent of the assessed value in the second five years in service, and 60 percent of the assessed value for all remaining years in service. The bill also provides that (i) solar photovoltaic projects five megawatts or less shall not be exempt from the assessment of a revenue share by ordinance of that locality and (ii) nothing in the bill shall be construed to authorize local taxation of generating or storage equipment of solar photovoltaic projects that serve the electricity needs of that property upon which such solar facilities are located. If a locality assesses a revenue share on such projects, the amount of the exemption shall be 100 percent of the assessed value.

The bill does not apply to projects five megawatts or less that were approved by a locality prior to July 1, 2022.

Staff Analysis: No Council action needed. Self-executing; no need to pass local ordinance.

9. *Bill Number*: HB 907/SB 526

Short Title: Alarm systems; regulation, battery-charged fence security systems

Bill Description: Allows a locality to require those persons providing or operating a battery-charged fence security system, defined in the bill, to obtain an alarm company permit and the corresponding fee and to require certain other requirements as defined in the bill. The bill provides that the locality can also require the installer of such security system to submit an affidavit disclosing information about the installation that includes an affirmation of compliance. The bill also provides that a locality can inspect such newly installed security system and issue a citation warning of noncompliance and can impose a penalty not exceeding $500 if the noncompliance is not remedied within the time period specified by the locality. This bill is identical to SB 526.

Staff Analysis: Staff recommends pursuing an ordinance to take advantage of this authority. However, staff also recommends additional research on the practical implications for staff of implementing this authority through an ordinance.
Staff recognizes that first responders - including police, fire, EMS, sheriff, and co-responder teams - must have safe access to those non-residential properties that may install battery charged fence systems. However, the City cannot ensure that safe access without having a registry of these fences and ensuring they comply with State regulation, including requirements related to signage, emergency access and voltage limits.
Should Council direct staff to pursue an ordinance in this area, staff will continue internal discussions - including the City Attorney's Office, Legislative Director, Police, Fire, Sheriff, and Code Administration - as well as with our counterparts in other localities across the Commonwealth, and return to Council with a recommended, actionable ordinance.

10. *Bill Number*: HB 214

Short Title: Redevelopment and housing authorities; naming convention

Bill Description: Provides that a locality that establishes a redevelopment and housing authority may name such authority an appropriate name and title. Current law requires the authority to be known as the "_____ (insert name of locality) Redevelopment and Housing Authority." The bill contains technical amendments.

Staff Analysis: No immediate Council action necessary. This law is intended to provide localities with permissive authority to more specifically describe the organization operating as a local housing authority in their community. As such, it would provide the City of Alexandria and the Alexandria Redevelopment Housing Authority (ARHA) the permissive authority to change the name of the City's Housing Authority to whatever naming convention is agreed upon by the City and the Housing Authority. For example, the City and ARHA could more specifically denote that ARHA is the Alexandria **City** Redevelopment Housing Authority or choose any name that we believe more appropriately describes our local housing authority and the role it plays in Alexandria.

No ordinance is necessary; Council action is needed only if a name change for ARHA is proposed.

11. *Bill Number*: HB 450/SB 278

Short Title: Parking of vehicles; electric vehicle charging spots, civil penalties

Bill Description: Prohibits a person from parking a vehicle not capable of receiving an electric charge or not in the process of charging in a space clearly marked as reserved for charging electric vehicles. A violation is subject to a civil penalty of no more than $25.

Staff Analysis: Staff supports enacting an ordinance. The Office of Climate Action can lead with involvement of Transportation and Environmental Services, the Department of General Services, Police, the City Attorney's Office, and the Traffic and Parking Board to provide expertise on drafting and implementation.

If the Council does not enact an ordinance pursuant to this permissive authority, police may issue citations for parking a vehicle not capable of receiving an electric charge, or not in the process of charging, in a space clearly marked as reserved for charging electric vehicles under Va. Code 46.2-1219.3. However, any fine collected would go to the state rather than remain with the City.

12. *Bill Number*: HB 961

Short Title: Cemeteries; registration; publication prior to sale.

Bill Description: Expands provisions that allow localities to adopt an ordinance setting forth a register of identified cemeteries, graveyards, or other places of burial located on private property not belonging to any memorial or monumental association by providing that such localities shall publish a notice prior to the public sale of any publicly owned property that contains a known cemetery, graveyard, or other place of burial, or as soon thereafter as possible. The notice shall specify that a cemetery is present on the property. If the property falls under an exception provided for significant historic and archeological sites that would be jeopardized by public disclosure of their location, then no such notice is required.

Staff Analysis: Office of Historic Alexandria supports enactment of an ordinance pursuant to this legislation. As part of the City's commitment to protecting and preserving historic cemetery sites, this would require that when publicly owned cemeteries are up for sale that the City put in the published sale notice that a cemetery is on the property. OHA reports that the City owns approximately 20 properties to which this new requirement would apply. OHA estimates that the only cost to the City would be the newspaper publication in case of such a sale, estimated at $1,000 to $3,000, depending on the newspaper and the length of the ad.

13. *Bill Number*: SB 537

Short Title: Trees; replacement and conservation during development process, powers of local government

Bill Description: Prevents the prohibition or the unreasonable limitation of silvicultural activities related to the replacement of trees during the development process and the conservation of trees during the land development process in certain localities. The bill specifies provisions related to the replacement of trees during the development process in localities and allows that any locality may adopt an ordinance providing for the planting and replacement of trees during the development process. Further, the bill specifies

provisions related to the conservation of trees during the development process in localities and allows that any locality may adopt an ordinance providing for the conservation of trees during the land development process. The bill directs specified stakeholders and parties to meet at least twice prior to the 2023 Session of the General Assembly to consider specified topics. The bill directs the participants to report their recommendations to the Chairmen of the House Committee on Counties, Cities and Towns and the Senate Committee on Agriculture, Conservation and Natural Resources by December 1, 2022. The provisions of the bill related to the conservation of trees during the development process do not become effective unless reenacted by the 2023 Session of the General Assembly.

Staff Analysis: The legislation has two new sections that expand upon the authority of localities to adopt ordinances regarding conservation (15.2-961.1) and replacement (15.2-961.4) of trees during the land development process. In some limited circumstances, the new legislation increases the amount of crown coverage a locality can require over what state law previously provided; however, the new legislation still provides less authority than the City already has under its charter on this issue. Consequently, staff's recommendation is to continue to utilize the charter authority, even though it is untested, rather than this new state law authority.

14. *Bill Number*: HB 632

Short Title: Exhaust systems; regulation of noise from vehicles

Bill Description: Makes certain secondary offenses related to loud exhaust systems that are not in good working order primary offenses and exempts local ordinances related to such exhaust systems from the prohibition on law-enforcement officers stopping a vehicle for a violation of a local ordinance unless it is a jailable offense.

Staff Analysis: This law amends Va. Code 46.2-1049, which prohibits the operation of a vehicle without a standard exhaust system that is in good working order to prevent excessive noise and allows for the police to pull over someone they believe to be in violation of this section. Previously a violation of 46.2-1049 could only be a secondary offense.

Local ordinance 10-3-1049 incorporates 46.2-1049 by reference so was changed on July 1, 2022, when the amendments to 46.2-1049 went into effect. Therefore, no ordinance change is needed as APD may initiate a traffic stop upon probable cause of a violation of local code 10-3-1049.

15. *Bill Number*: HB 1325

Short Title: General Powers of local governments; additional powers; Commercial Property Assessed Clean Energy (C-PACE) financing programs.

Bill Description: Changes the existing authorization for local governments to finance, by ordinance, clean energy, resiliency, and stormwater management programs to authorize the financing of eligible improvements to eligible properties, as defined in the bill, under C-PACE loan programs. The bill allows localities to delegate billing, collection, and remittance of C-PACE loan payments to a third party.

Staff Analysis: Staff is bringing forth an amendment to the City's C-PACE ordinance for Council's

consideration in the October sessions.

FISCAL IMPACT: Any fiscal impact will be more thoroughly described when an ordinance is present to Council for consideration.

ATTACHMENTS: None

STAFF:
Emily A. Baker, Deputy City Manager
Sarah Taylor, Legislative Director
Joanna Anderson, City Attorney
Kevin Greenlief, Assistant Director of Finance
Gregg Fields, Director of Code Administration
Helen McIlvaine, Director of Office of Housing
Gretchen Bulova, Director of Office of Historic Alexandria
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