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HOUSE BILL NO. 2451

Offered January 10, 2007

Prefiled January 9, 2007

A BILL to amend and reenact § 15.2-2305 of the Code of Virginia, relating to affordable dwelling unit ordinances.

Patron—Toscano

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:**1. That § 15.2-2305 of the Code of Virginia is amended and reenacted as follows:**

§ 15.2-2305. Affordable dwelling unit ordinances.

A. In furtherance of the purpose of providing affordable shelter for all residents of the Commonwealth, the governing body of any county, other than counties to which § 15.2-2304 applies, city or town may by amendment to the zoning ordinances of such locality provide for an affordable housing dwelling unit program. Such program shall address housing needs, promote a full range of housing choices, and encourage the construction and continued existence of moderately priced housing by providing for optional increases in density in order to reduce land costs for such moderately priced housing. Any local ordinance of any locality providing optional increases in density for provision of low and moderate income housing adopted before December 31, 1988, shall continue in full force and effect. Any local ordinance may authorize the governing body to (i) establish qualifying jurisdiction-wide affordable dwelling unit sales prices based on local market conditions, (ii) establish jurisdiction-wide affordable dwelling unit qualifying income guidelines, and (iii) (ii) offer incentives other than density increases, such as reductions or waiver of permit, development, and infrastructure fees, as the governing body deems appropriate to encourage the provision of affordable housing. Counties to which § 15.2-2304 applies shall be governed by the provisions of § 15.2-2304 for purposes of the adoption of an affordable dwelling unit ordinance.

B. A zoning ordinance establishing an affordable housing dwelling unit program may include, among other things, reasonable regulations and provisions as to any or all of the following:

1. For a definition of affordable housing and affordable dwelling units.

2. For application of the requirements of an affordable housing dwelling unit program to any site, as defined by the locality, or a portion thereof at one location which is the subject of an application for rezoning or special exception or, at the discretion of the local governing body: (i) a site plan or subdivision plat which yields, as submitted by the applicant, fifty or more dwelling units at an equivalent density greater than one unit per acre and which is located within an approved sewer area, or (ii) a site plan or subdivision plat requesting approval of multiple family dwelling unit structures four stories or less in height (nonelevator structures).

3. For an increase of up to twenty percent in the developable density of each site subject to the ordinance and for a provision requiring up to twelve and one-half percent of the total units approved, including the optional density increase, to be affordable dwelling units, as defined in the ordinance. In the event a twenty percent increase is not achieved, locality specifies a density bonus of less than twenty percent, then the percentage of affordable dwelling units required shall maintain the same ratio of twenty percent to twelve and one-half percent.

4. For increases by up to twenty percent of the density or of the lower and upper end of the density range set forth in the comprehensive plan of such locality applicable to rezoning and special exception applications that request approval of single family detached dwelling units or single family attached dwelling units, when such applications are approved after the effective date of a local affordable housing zoning ordinance amendment, (i) increases by up to twenty percent of the density, or of the lower and upper end of the applicable density range, set forth in the locality's comprehensive plan, and (ii) a requirement that not less than twelve and one-half percent of the total number of dwelling units approved pursuant to such applications shall be affordable dwelling units, as defined by the local zoning ordinance. If the locality specifies a density bonus of less than twenty percent, the percentage of affordable dwelling units required shall maintain the same ratio of twenty percent to twelve and one-half percent.

5. For a requirement that not less than twelve and one-half percent of the total number of dwelling units approved pursuant to a zoning ordinance amendment enacted pursuant to subdivision B 4 of this section shall be affordable dwelling units, as defined by the local zoning ordinance unless reduced by the twenty to twelve and one-half percent ratio pursuant to subdivision B 3 of this section.

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59 65. For increases by up to ten percent of the density or of the lower and upper end of the density
60 range, whichever is appropriate, set forth in the comprehensive plan of such locality applicable to
61 rezoning and special exception applications or, at the discretion of the local governing body, site plan
62 and subdivision plat applications that request requesting approval of nonelevator multiple family
63 dwelling unit structures four stories or less in height (*nonelevator structures*) when such applications are
64 approved after the effective date of a local affordable housing zoning ordinance, (i) *increases by up to*
65 *ten percent of the density, or of the lower and upper end of the applicable density range, set forth in the*
66 *locality's comprehensive plan, and (ii) a requirement that not less than six and one-quarter percent of*
67 *the total number of dwelling units approved pursuant to such applications shall be affordable dwelling*
68 *units. If the locality specifies a density bonus of less than ten percent, the percentage of affordable*
69 *dwelling units required shall maintain the same ratio of ten percent to six and one-quarter percent.*
70 However, at the option of the applicant, the provision pursuant to subdivision B 4 shall apply.

71 7. For a requirement that not less than six and one-quarter percent of the total number of dwelling
72 units approved pursuant to a zoning ordinance amendment enacted pursuant to subdivision B 6 of this
73 section shall be affordable dwelling units, as defined in the local zoning ordinance. In the event a ten
74 percent increase is not achieved, the percentage of affordable dwelling units required shall maintain the
75 same ratio of ten percent to six and one-quarter percent.

76 86. For reasonable regulations requiring the affordable dwelling units to be built and offered for sale
77 or rental concurrently with the construction and certificate of occupancy of a reasonable proportion of
78 the market rate units.

79 97. For standards of compliance with the provisions of an affordable housing dwelling unit program
80 and for the authority of the local governing body or its designee to enforce compliance with such
81 standards and impose reasonable penalties for noncompliance, provided that a local zoning ordinance
82 provide for an appeal process for any party aggrieved by a decision of the local governing body.

83 C. Nothing contained in this section shall apply to any elevator structure four stories or above. Any
84 ordinance adopted pursuant to this section may also provide for the following:

85 1. Establishment of a housing fund, the purpose of which will be to assist for-profit or nonprofit
86 housing developers or organizations to develop or preserve affordable housing for low and moderate
87 income persons.

88 2. The acceptance of cash, in lieu of the affordable dwelling units specified pursuant to subdivision B
89 3, B 4, or B 5, at the option of a developer, in an amount consistent with the prices established by a
90 locality pursuant to subdivision E 4. Any cash received by a locality pursuant to this section shall be
91 placed into a housing fund established by subdivision 1 or shall otherwise be utilized for the
92 establishment or preservation of affordable housing within the locality.

93 D. Any ordinance adopted hereunder shall provide that the local governing body shall have no more
94 than 280 days in which to process site or subdivision plans proposing the development or construction
95 of affordable housing or affordable dwelling units under such ordinance. The calculation of such period
96 of review shall include only the time that plans are in review by the local governing body and shall not
97 include such time as may be required for revision or modification in order to comply with lawful
98 requirements set forth in applicable ordinances and regulations.

99 E. A locality establishing an affordable housing dwelling unit program in its zoning ordinance shall
100 establish in its general ordinances, adopted in accordance with the requirements of § 15.2-1427 B,
101 reasonable regulations and provisions as to any or all of the following:

102 1. For administration and regulation by a local housing authority or by the local governing body or
103 its designee of the sale and rental of affordable units.

104 2. For a local housing authority or local governing body or its designee to have an exclusive right to
105 purchase up to one-third of the for-sale affordable housing dwelling units within a development within
106 ninety days of a dwelling unit being completed and ready for purchase, provided that the remaining
107 two-thirds of such units be offered for sale exclusively for a ninety-day period to persons who meet the
108 income criteria established by the local housing authority or local governing body or the latter's
109 designee.

110 3. For a local housing authority or local governing body or its designee to have an exclusive right to
111 lease up to a specified percentage of the rental affordable dwelling units within a development within a
112 controlled period determined by the housing authority or local governing body or its designee, provided
113 that the remaining for-rental affordable dwelling units within a development be offered to persons who
114 meet the income criteria established by the local housing authority or local governing body or its
115 designee.

116 4. For the establishment of jurisdiction-wide affordable dwelling unit sales prices by the local
117 housing authority or local governing body or the latter's designee, initially and adjusted semiannually,
118 based on a determination of all ordinary, necessary and reasonable costs required to construct the
119 affordable dwelling unit prototype dwellings by private industry after considering written comment by
120 the public, local housing authority or advisory body to the local governing body, and other information

121 such as the area's current general market and economic conditions, provided that sales prices not include
122 the cost of land, on-site sales commissions and marketing expenses, but may include, among other costs,
123 builder-paid permanent mortgage placement costs and buy-down fees and closing costs except prepaid
124 expenses required at settlement.

125 5. For the establishment of jurisdiction-wide affordable dwelling unit rental prices by a local housing
126 authority or local governing body or its designee, initially and adjusted semiannually, based on a
127 determination of all ordinary, necessary and reasonable costs required to construct and market the
128 required number of affordable dwelling rental units by private industry in the area, after considering
129 written comment by the public, local housing authority, or advisory body to the local governing body,
130 and other information such as the area's current general market and economic conditions.

131 6. For a requirement that the prices for resales and rerentals be controlled by the local housing
132 authority or local governing body or designee for a period of fifty years after the initial sale or rental
133 transaction for each affordable dwelling unit, provided that the ordinance further provide for reasonable
134 rules and regulations to implement a price control provision.

135 7. For establishment of an affordable dwelling unit advisory board which shall, among other things,
136 advise the jurisdiction on sales and rental prices of affordable dwelling units; advise the housing
137 authority or local governing body or its designees on requests for modifications of the requirements of
138 an affordable dwelling unit program; adopt regulations concerning its recommendations of sales and
139 rental prices of affordable dwelling units; and adopt procedures concerning requests for modifications of
140 an affordable housing dwelling unit program. Members of the board, to be ten in number and to be
141 appointed by the governing body, shall be qualified as follows: two members shall be either civil
142 engineers or architects, each of whom shall be registered or certified with the relevant agency of the
143 Commonwealth, or planners, all of whom shall have extensive experience in practice in the locality; one
144 member shall be a real estate salesperson or broker, licensed in accordance with Chapter 21
145 (§ 54.1-2100 et seq.) of Title 54.1; one member shall be a representative of a lending institution which
146 finances residential development in the locality; four members shall consist of a representative from a
147 local housing authority or local governing body or its designee, a residential builder with extensive
148 experience in producing single-family detached and attached dwelling units, a residential builder with
149 extensive experience in producing multiple-family dwelling units, and a representative from either the
150 public works or planning department of the locality; one member may be a representative of a nonprofit
151 housing organization which provides services in the locality; and one citizen of the locality. At least four
152 members of the advisory board shall be employed in the locality.

153 8. The sales and rental price for affordable dwelling units within a development shall be established
154 such that the owner/applicant shall not suffer economic loss as a result of providing the required
155 affordable dwelling units. "Economic loss" for sales units means that result when the owner or applicant
156 of a development fails to recoup the cost of construction and certain allowances as may be determined
157 by the designee of the governing body for the affordable dwelling units, exclusive of the cost of land
158 acquisition and cost voluntarily incurred but not authorized by the ordinance, upon the sale of an
159 affordable dwelling unit.