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SENATE BILL NO. 955

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Local Government
on January 30, 2007)

(Patrons Prior to Substitute—Senators Quayle, Rerras [SB 1064] and Deeds [SB 1131])

A BILL to amend and reenact § 15.2-2305 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2305.1, relating to affordable dwelling unit ordinances.

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2305 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2305.1 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~~ *locality*, other than ~~counties~~ *localities* 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 affordable to low and moderate income citizens* by providing for ~~optional~~ increases in density in ~~order to reduce land costs for such moderately priced~~ *exchange for providing such affordable* 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) 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 adopted pursuant to this section shall include, among other things,~~ reasonable regulations and provisions as to ~~any or all of the following:~~

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

2. For application of the requirements of ~~an~~ *The* affordable housing dwelling unit program *applies* to any site, as defined by the locality, or a portion thereof at ~~one location~~ *property* which is the subject of an application for rezoning, ~~conditional use permit~~ or special exception ~~for residential use, including properties with a combination of residential dwelling units and nonresidential uses, but only to that portion of the property to be used for residential purposes. However, the program shall not be applicable to property with only nonresidential uses.~~ or, at the discretion of the local governing body, 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.

3. ~~For~~ *The applicant may request, upon an application for rezoning, conditional use permit, or special exception,* an increase of up to ~~twenty~~ 30 percent in the developable density of each site subject to the ordinance and for a provision requiring *in exchange for providing* up to ~~twelve and one-half~~ 17 percent of the total units approved, including the optional density increase, ~~to be as~~ *affordable dwelling units, as* defined in the ordinance. In the event a ~~twenty~~ 30 percent increase in density is not ~~achieved~~ *achievable, not offered by the applicant, or not permitted in the zoning district where the property is located,* the percentage of affordable dwelling units required shall maintain the same ratio of ~~twenty~~ 30 percent to ~~twelve and one-half~~ 17 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.

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.~~

6. For increases by up to ten percent of the density or of the lower and upper end of the density range, whichever is appropriate, set forth in the comprehensive plan of such locality applicable to rezoning and special exception or, at the discretion of the local governing body, site plan and

subdivision plat applications that request approval of nonelevator multiple family dwelling unit structures four stories or less in height when such applications are approved after the effective date of a local affordable housing zoning ordinance. However, at the option of the applicant, the provision pursuant to subdivision B 4 shall apply.

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

4. The locality establish a local housing trust fund as part of its affordable housing dwelling unit program to assist in achieving the affordable housing goals of the locality pursuant to this section and § 15.2-2306. The local housing trust fund may be used to assist nonprofit organizations (i) to develop or preserve affordable housing for low and moderate income persons and families, (ii) to acquire land and improvements, or (iii) to construct buildings utilities, drainage, landscaping, lighting, walkways, or similar site improvements, other than the construction of streets.

5. The locality permit, at the option of the applicant, for the applicant to make a cash contribution into the local housing trust fund in lieu of providing affordable housing dwelling units, or a combination thereof, pursuant to this section and § 15.2-2306.

6. The increase in density offsets the costs of providing affordable housing dwelling units or a cash contribution to the local housing trust fund, or combination thereof, and the applicant does not suffer economic loss as a result of providing the affordable dwelling units. For purposes of this section, "economic loss" means that the applicant fails to recoup the cost of providing an affordable dwelling unit, exclusive of the cost of land acquisition and costs incurred by the applicant, upon the sale of that affordable dwelling unit.

87. For reasonable regulations requiring the affordable dwelling units to be provided by the applicant be built and offered for sale or rental concurrently with the construction and certificate of occupancy of a reasonable proportion of the market rate units.

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

C8. Nothing contained in this section shall apply to For any building that is elevator structure four stories or above and has an elevator, the locality, in consideration of an application pursuant to this section, shall take into account the unique ancillary costs associated with living in such a building, including but not limited to fees for parking, common area maintenance, and association management, and determine whether such fees prevent the housing from being affordable, under the definition established by the locality in its ordinance adopted pursuant to this section.

C. The locality may establish an affordable dwelling unit advisory board comprised of citizens, housing and real estate professionals, and such other persons as the locality deems appropriate to provide advice on the affordable housing dwelling unit program in the locality.

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

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

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

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

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

designee.

4. For the establishment of jurisdiction-wide affordable dwelling unit sales prices by the local housing authority or local governing body or the latter's designee, initially and adjusted semiannually, based on a determination of all ordinary, necessary and reasonable costs required to construct the affordable dwelling unit prototype dwellings by private industry after considering written comment by the public, local housing authority or advisory body to the local governing body, and other information such as the area's current general market and economic conditions, provided that sales prices not include the cost of land, on-site sales commissions and marketing expenses, but may include, among other costs, builder-paid permanent mortgage placement costs and buy-down fees and closing costs except prepaid expenses required at settlement.

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

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

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

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

§ 15.2-2305.1. Affordable housing dwelling unit program through plan of development, site plan, or subdivision process.

A. Any locality may adopt by ordinance an affordable housing dwelling unit program through its plan of development, site plan, or subdivision process, as authorized by this section. Such program shall address housing needs, promote a full range of housing choices, and encourage the construction and continued existence of housing affordable to low and moderate income citizens by providing for optional increases in density in exchange for providing such affordable housing.

B. The ordinance establishing an affordable housing dwelling unit program pursuant to this section shall include the following:

1. The affordable housing dwelling unit program shall be at the election of the property owner such that the property owner may develop the property, pursuant to the locality's applicable plan of development, site plan, or subdivision process, without participating in the affordable housing dwelling unit program. However, if the property owner elects to participate in the program, the property owner will be entitled to the increases in densities as authorized by this section.

2. The affordable housing dwelling unit program shall be applicable to any property with residential dwelling units to be located thereon, including properties with a combination of residential dwelling

183 units and nonresidential uses, but only to that portion of the property to be used for residential
184 purposes. However, the program shall not be applicable to property with only nonresidential uses.

185 3. The increases in density shall be calculated using the base density permitted for the property as it
186 is zoned at the time of the plan of development, site plan, or subdivision submission, with the increases
187 in density being an additional density granted administratively through the locality's plan of
188 development, site plan, or subdivision process.

189 4. A local housing trust fund may be established as part of its affordable housing dwelling unit
190 program to assist in achieving the affordable housing goals of the locality pursuant to this section and
191 § 15.2-2305. The local housing trust fund may be used to assist nonprofit organizations (i) to develop or
192 preserve affordable housing for low and moderate income persons and families, (ii) to acquire land and
193 improvements, or (iii) to construct buildings, utilities, drainage, landscaping, lighting, walkways, or
194 similar site improvements, other than the construction of streets.

195 5. The locality may permit, at the option of the applicant, for the applicant to make a cash
196 contribution into the local housing trust fund in lieu of providing affordable housing dwelling units, or a
197 combination thereof, pursuant to this section and § 15.2-2305.

198 6. The increase in density offsets the costs of providing affordable housing dwelling units or a cash
199 contribution to the local housing trust fund, or combination thereof, and the applicant does not suffer
200 economic loss as a result of providing the affordable dwelling units. For purposes of this section,
201 "economic loss" means that the applicant fails to recoup the cost of providing an affordable dwelling
202 unit, exclusive of the cost of land acquisition and costs incurred by the applicant, upon the sale of that
203 affordable dwelling unit.

204 7. The affordable dwelling units to be provided by the applicant shall be built and offered for sale or
205 rental concurrently with the construction and certificate of occupancy of a reasonable proportion of the
206 market rate units.

207 8. A schedule of permitted increases in densities and affordable housing dwelling unit requirements
208 shall be established by zoning district and made available to the property owner if the property owner
209 elects to participate in the affordable housing dwelling unit program.