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**HOUSE BILL NO. 1853**

Offered January 9, 2013

Prefiled January 8, 2013

A *BILL to amend and reenact §§ 15.2-2200, 15.2-2201, 15.2-2204, 15.2-2211, and 15.2-2212 of the Code of Virginia, relating to the inclusion of military installations in local planning, zoning, and development procedures.*

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 Patron—Knight
 

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Referred to Committee on Counties, Cities and Towns

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 15.2-2200, 15.2-2201, 15.2-2204, 15.2-2211, and 15.2-2212 of the Code of Virginia are amended and reenacted as follows:**

**§ 15.2-2200. Declaration of legislative intent.**

This chapter is intended to encourage localities to improve the public health, safety, convenience and welfare of its citizens and to plan for the future development of communities to the end that transportation systems be carefully planned; that new community centers be developed with adequate highway, utility, health, educational, and recreational facilities; that the need for mineral resources and the needs of agriculture, industry, and business be recognized in future growth; *that the requirements and concerns of military installations be recognized and addressed in consideration of future development*; that residential areas be provided with healthy surroundings for family life; that agricultural and forestal land be preserved; and that the growth of the community be consonant with the efficient and economical use of public funds.

**§ 15.2-2201. Definitions.**

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

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features, design elements, uses, services, or amenities desired by the locality, including but not limited to, site design incorporating principles of new urbanism and traditional neighborhood development, environmentally sustainable and energy-efficient building design, affordable housing creation and preservation, and historical preservation, as part of the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under jurisdiction of the U.S. Department of Defense, including any leased facility, or any land or interest in land owned by the Commonwealth and administered by the Adjutant General of Virginia or the Virginia Department of Military Affairs. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

59 "Official map" means a map of legally established and proposed public streets, waterways, and public  
60 areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

61 "Planned unit development" means a form of development characterized by unified site design for a  
62 variety of housing types and densities, clustering of buildings, common open space, and a mix of  
63 building types and land uses in which project planning and density calculation are performed for the  
64 entire development rather than on an individual lot basis.

65 "Planning district commission" means a regional planning agency chartered under the provisions of  
66 Chapter 42 (§ 15.2-4200 et seq.) of this title.

67 "Plat" or "plat of subdivision" means the schematic representation of land divided or to be divided  
68 and information in accordance with the provisions of §§ 15.2-2241, 15.2-2242, 15.2-2258, 15.2-2262,  
69 and 15.2-2264, and other applicable statutes.

70 "Preliminary subdivision plat" means the proposed schematic representation of development or  
71 subdivision that establishes how the provisions of §§ 15.2-2241 and 15.2-2242, and other applicable  
72 statutes will be achieved.

73 "Resident curator" means a person, firm, or corporation that leases or otherwise contracts to manage,  
74 preserve, maintain, operate, or reside in a historic property in accordance with the provisions of  
75 § 15.2-2306 and other applicable statutes.

76 "Site plan" means the proposal for a development or a subdivision including all covenants, grants or  
77 easements and other conditions relating to use, location and bulk of buildings, density of development,  
78 common open space, public facilities and such other information as required by the subdivision  
79 ordinance to which the proposed development or subdivision is subject.

80 "Special exception" means a special use, that is a use not permitted in a particular district except by  
81 a special use permit granted under the provisions of this chapter and any zoning ordinances adopted  
82 herewith.

83 "Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

84 "Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the  
85 division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose  
86 of transfer of ownership or building development, or, if a new street is involved in such division, any  
87 division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall  
88 relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation  
89 of any single division of land into two lots or parcels, a plat of such division shall be submitted for  
90 approval in accordance with § 15.2-2258.

91 "Variance" means, in the application of a zoning ordinance, a reasonable deviation from those  
92 provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a  
93 building or structure when the strict application of the ordinance would result in unnecessary or  
94 unreasonable hardship to the property owner, and such need for a variance would not be shared  
95 generally by other properties, and provided such variance is not contrary to the intended spirit and  
96 purpose of the ordinance, and would result in substantial justice being done. It shall not include a  
97 change in use which change shall be accomplished by a rezoning or by a conditional zoning.

98 "Zoning" or "to zone" means the process of classifying land within a locality into areas and districts,  
99 such areas and districts being generally referred to as "zones," by legislative action and the prescribing  
100 and application in each area and district of regulations concerning building and structure designs,  
101 building and structure placement and uses to which land, buildings and structures within such designated  
102 areas and districts may be put.

103 **§ 15.2-2204. Advertisement of plans, ordinances, etc.; joint public hearings; written notice of**  
104 **certain amendments.**

105 A. Plans or ordinances, or amendments thereof, recommended or adopted under the powers conferred  
106 by this chapter need not be advertised in full, but may be advertised by reference. Every such  
107 advertisement shall contain a descriptive summary of the proposed action and a reference to the place or  
108 places within the locality where copies of the proposed plans, ordinances or amendments may be  
109 examined.

110 The local planning commission shall not recommend nor the governing body adopt any plan,  
111 ordinance or amendment thereof until notice of intention to do so has been published once a week for  
112 two successive weeks in some newspaper published or having general circulation in the locality;  
113 however, the notice for both the local planning commission and the governing body may be published  
114 concurrently. The notice shall specify the time and place of hearing at which persons affected may  
115 appear and present their views, not less than five days nor more than 21 days after the second  
116 advertisement appears in such newspaper. The local planning commission and governing body may hold  
117 a joint public hearing after public notice as set forth hereinabove. If a joint hearing is held, then public  
118 notice as set forth above need be given only by the governing body. The term "two successive weeks"  
119 as used in this paragraph shall mean that such notice shall be published at least twice in such newspaper  
120 with not less than six days elapsing between the first and second publication. After enactment of any

plan, ordinance or amendment, further publication thereof shall not be required.

B. When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of 25 or fewer parcels of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels which lie in other localities of the Commonwealth; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owner's associations within the planned unit development that have members owning property located within 2,000 feet of the affected property as may be required by the commission or its agent. However, when a proposed amendment to the zoning ordinance involves a tract of land not less than 500 acres owned by the Commonwealth or by the federal government, and when the proposed change affects only a portion of the larger tract, notice need be given only to the owners of those properties that are adjacent to the affected area of the larger tract. Notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement. If the hearing is continued, notice shall be remailed. Costs of any notice required under this chapter shall be taxed to the applicant.

When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of more than 25 parcels of land, or a change to the applicable zoning ordinance text regulations that decreases the allowed dwelling unit density of any parcel of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner, owners, or their agent of each parcel of land involved, provided, however, that written notice of such changes to zoning ordinance text regulations shall not have to be mailed to the owner, owners, or their agent of lots shown on a subdivision plat approved and recorded pursuant to the provisions of Article 6 (§ 15.2-2240 et seq.) where such lots are less than 11,500 square feet. One notice sent by first class mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement, provided that a representative of the local commission shall make affidavit that such mailings have been made and file such affidavit with the papers in the case. Nothing in this subsection shall be construed as to invalidate any subsequently adopted amendment or ordinance because of the inadvertent failure by the representative of the local commission to give written notice to the owner, owners or their agent of any parcel involved.

The governing body may provide that, in the case of a condominium or a cooperative, the written notice may be mailed to the unit owners' association or proprietary lessees' association, respectively, in lieu of each individual unit owner.

Whenever the notices required hereby are sent by an agency, department or division of the local governing body, or their representative, such notices may be sent by first class mail; however, a representative of such agency, department or division shall make affidavit that such mailings have been made and file such affidavit with the papers in the case.

A party's actual notice of, or active participation in, the proceedings for which the written notice provided by this section is required shall waive the right of that party to challenge the validity of the proceeding due to failure of the party to receive the written notice required by this section.

C. When a proposed comprehensive plan or amendment thereto; a proposed change in zoning map classification; or an application for special exception for a change in use or to increase by greater than 50 percent of the bulk or height of an existing or proposed building, but not including renewals of previously approved special exceptions, involves any parcel of land located within one-half mile of a boundary of an adjoining locality of the Commonwealth, then, in addition to the advertising and written notification as required by this section, written notice shall also be given by the local commission, or its representative, at least 10 days before the hearing to the chief administrative officer, or his designee, of such adjoining locality.

D. When (i) a proposed comprehensive plan or amendment thereto, (ii) a proposed change in zoning map classification, or (iii) an application for special exception for a change in use involves any parcel of land located within 3,000 feet of a boundary of a military base, military installation, military airport, excluding armories operated by the Virginia National Guard, or licensed public-use airport then, in addition to the advertising and written notification as required by this section, written notice shall also be given by the local commission, or its representative, at least ~~10~~ 30 days before the hearing to the commander of the military base, military installation, military airport, or owner of such public-use airport, and the notice shall advise the military commander or owner of such public-use airport of the opportunity to submit comments or recommendations.

E. The adoption or amendment prior to July 1, 1996, of any plan or ordinance under the authority of prior acts shall not be declared invalid by reason of a failure to advertise or give notice as may be required by such act or by this chapter, provided a public hearing was conducted by the governing body prior to such adoption or amendment. Every action contesting a decision of a locality based on a failure to advertise or give notice as may be required by this chapter shall be filed within 30 days of such decision with the circuit court having jurisdiction of the land affected by the decision. However, any litigation pending prior to July 1, 1996, shall not be affected by the 1996 amendment to this section.

F. Notwithstanding any contrary provision of law, general or special, the City of Richmond may cause such notice to be published in any newspaper of general circulation in the city.

G. When a proposed comprehensive plan or amendment of an existing plan designates or alters previously designated corridors or routes for electric transmission lines of 150 kilovolts or more, written notice shall also be given by the local planning commission, or its representative, at least 10 days before the hearing to each electric utility with a certificated service territory that includes all or any part of such designated electric transmission corridors or routes.

H. When any applicant requesting a written order, requirement, decision, or determination from the zoning administrator, other administrative officer, or a board of zoning appeals that is subject to the appeal provisions contained in § 15.2-2311 or 15.2-2314, is not the owner or the agent of the owner of the real property subject to the written order, requirement, decision or determination, written notice shall be given to the owner of the property within 10 days of the receipt of such request. Such written notice shall be given by the zoning administrator or other administrative officer or, at the direction of the administrator or officer, the requesting applicant shall be required to give the owner such notice and to provide satisfactory evidence to the zoning administrator or other administrative officer that the notice has been given. Written notice mailed to the owner at the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall satisfy the notice requirements of this subsection.

This subsection shall not apply to inquiries from the governing body, planning commission, or employees of the locality made in the normal course of business.

**§ 15.2-2211. Cooperation of local planning commissions and other agencies.**

The planning commission of any locality may cooperate with local planning commissions or legislative and administrative bodies and officials of other localities so as to coordinate planning and development among the localities. *The planning commission of any locality shall cooperate with the installation commander of any military installation that will be affected by potential development within the locality so as to reasonably protect the military installation against any adverse effects that might be caused by the development.* Planning commissions may appoint committees and may adopt rules as needed to effect such cooperation. Planning commissions may also cooperate with state and federal officials, departments and agencies. Planning commissions may request from such departments and agencies, and such departments and agencies of the Commonwealth shall furnish, such reasonable information which may affect the planning and development of the locality.

**§ 15.2-2212. Qualifications, appointment, removal, terms, and compensation of members of local planning commissions.**

A local planning commission shall consist of not less than five nor more than fifteen members, appointed by the governing body, all of whom shall be residents of the locality, qualified by knowledge and experience to make decisions on questions of community growth and development; provided, that at least one-half of the members so appointed shall be owners of real property. The local governing body may require each member of the commission to take an oath of office.

One member of the commission may be a member of the governing body of the locality, and one member may be a member of the administrative branch of government of the locality. The term of each of these two members shall be coextensive with the term of office to which he has been elected or appointed, unless the governing body, at the first regular meeting each year, appoints others to serve as their representatives. The remaining members of the commission first appointed shall serve respectively for terms of one year, two years, three years, and four years, divided equally or as nearly equal as possible between the membership. Subsequent appointments shall be for terms of four years each. The local governing bodies may establish different terms of office for initial and subsequent appointments including terms of office that are concurrent with those of the appointing governing body. Vacancies shall be filled by appointment for the unexpired term only.

*The governing body may appoint an additional nonvoting member of the commission who shall be a representative of the military installation or installations located partly or entirely within the locality. The military representative may be appointed from among the people nominated by the installation commander or commanders, if he or they choose to make a nomination.*

Members may be removed for malfeasance in office. Notwithstanding the foregoing provision, a member of a local planning commission may be removed from office by the local governing body without limitation in the event that the commission member is absent from any three consecutive

244 meetings of the commission, or is absent from any four meetings of the commission within any  
245 12-month period. In either such event, a successor shall be appointed by the governing body for the  
246 unexpired portion of the term of the member who has been removed.  
247 The local governing body may provide for compensation to commission members for their services,  
248 reimbursement for actual expenses incurred, or both.

INTRODUCED

HB1853