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**HOUSE BILL NO. 650**

Offered January 13, 2016

Prefiled January 11, 2016

*A BILL to amend and reenact § 15.2-2241 of the Code of Virginia, relating to mandatory provisions of a subdivision ordinance; notice to homeowner associations.*

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Patron—Marshall, R.G.

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Referred to Committee on Counties, Cities and Towns

**Be it enacted by the General Assembly of Virginia:****1. That § 15.2-2241 of the Code of Virginia is amended and reenacted as follows:****§ 15.2-2241. Mandatory provisions of a subdivision ordinance.**

A. A subdivision ordinance shall include reasonable regulations and provisions that apply to or provide:

1. For plat details which shall meet the standard for plats as adopted under § 42.1-82 of the Virginia Public Records Act (§ 42.1-76 et seq.);

2. For the coordination of streets within and contiguous to the subdivision with other existing or planned streets within the general area as to location, widths, grades and drainage, including, for ordinances and amendments thereto adopted on or after January 1, 1990, for the coordination of such streets with existing or planned streets in existing or future adjacent or contiguous to adjacent subdivisions;

3. For adequate provisions for drainage and flood control, for adequate provisions related to the failure of impounding structures and impacts within dam break inundation zones, and other public purposes, and for light and air, and for identifying soil characteristics;

4. For the extent to which and the manner in which streets shall be graded, graveled or otherwise improved and water and storm and sanitary sewer and other public utilities or other community facilities are to be installed;

5. For the acceptance of dedication for public use of any right-of-way located within any subdivision or section thereof, which has constructed or proposed to be constructed within the subdivision or section thereof, any street, curb, gutter, sidewalk, bicycle trail, drainage or sewerage system, waterline as part of a public system or other improvement dedicated for public use, and maintained by the locality, the Commonwealth, or other public agency, and for the provision of other site-related improvements required by local ordinances for vehicular ingress and egress, including traffic signalization and control, for public access streets, for structures necessary to ensure stability of critical slopes, and for storm water management facilities, financed or to be financed in whole or in part by private funds only if the owner or developer (i) certifies to the governing body that the construction costs have been paid to the person constructing such facilities or, at the option of the local governing body, presents evidence satisfactory to the governing body that the time for recordation of any mechanics lien has expired or evidence that any debt for said construction that may be due and owing is contested and further provides indemnity with adequate surety in an amount deemed sufficient by the governing body or its designated administrative agency; (ii) furnishes to the governing body a certified check or cash escrow in the amount of the estimated costs of construction or a personal, corporate or property bond, with surety satisfactory to the governing body or its designated administrative agency, in an amount sufficient for and conditioned upon the construction of such facilities, or a contract for the construction of such facilities and the contractor's bond, with like surety, in like amount and so conditioned; or (iii) furnishes to the governing body a bank or savings institution's letter of credit on certain designated funds satisfactory to the governing body or its designated administrative agency as to the bank or savings institution, the amount and the form. The amount of such certified check, cash escrow, bond, or letter of credit shall not exceed the total of the estimated cost of construction based on unit prices for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs, inflation, and potential damage to existing roads or utilities, which shall not exceed 10 percent of the estimated construction costs. If the owner or developer defaults on construction of such facilities, and such facilities are constructed by the surety or with funding from the aforesaid check, cash escrow, bond or letter of credit, the locality shall be entitled to retain or collect the allowance for administrative costs to the extent the costs of such construction do not exceed the total of the originally estimated costs of construction and the allowance for administrative costs. "Such facilities," as used in this section, means those facilities specifically provided for in this section.

If a developer records a final plat which may be a section of a subdivision as shown on an approved

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59 preliminary subdivision plat and furnishes to the governing body a certified check, cash escrow, bond, or  
60 letter of credit in the amount of the estimated cost of construction of the facilities to be dedicated within  
61 said section for public use and maintained by the locality, the Commonwealth, or other public agency,  
62 the developer shall have the right to record the remaining sections shown on the preliminary subdivision  
63 plat for a period of five years from the recordation date of any section, or for such longer period as the  
64 local commission or other agent may, at the approval, determine to be reasonable, taking into  
65 consideration the size and phasing of the proposed development, subject to the terms and conditions of  
66 this subsection and subject to engineering and construction standards and zoning requirements in effect  
67 at the time that each remaining section is recorded. In the event a governing body of a county, wherein  
68 the highway system is maintained by the Department of Transportation, has accepted the dedication of a  
69 road for public use and such road due to factors other than its quality of construction is not acceptable  
70 into the secondary system of state highways, then such governing body may, if so provided by its  
71 subdivision ordinance, require the subdivider or developer to furnish the county with a maintenance and  
72 indemnifying bond, with surety satisfactory to the governing body or its designated administrative  
73 agency, in an amount sufficient for and conditioned upon the maintenance of such road until such time  
74 as it is accepted into the secondary system of state highways. In lieu of such bond, the governing body  
75 or its designated administrative agency may accept a bank or savings institution's letter of credit on  
76 certain designated funds satisfactory to the governing body or its designated administrative agency as to  
77 the bank or savings institution, the amount and the form, or accept payment of a negotiated sum of  
78 money sufficient for and conditioned upon the maintenance of such road until such time as it is  
79 accepted into the secondary system of state highways and assume the subdivider's or developer's liability  
80 for maintenance of such road. "Maintenance of such road" as used in this section, means maintenance of  
81 the streets, curb, gutter, drainage facilities, utilities or other street improvements, including the correction  
82 of defects or damages and the removal of snow, water or debris, so as to keep such road reasonably  
83 open for public usage.

84 As used in this section, "designated administrative agency" means the planning commission of the  
85 locality or an agent designated by the governing body of the locality for such purpose as set forth in  
86 §§ 15.2-2258 through 15.2-2261;

87 6. For conveyance of common or shared easements to franchised cable television operators furnishing  
88 cable television and public service corporations furnishing cable television, gas, telephone and electric  
89 service to the proposed subdivision. Once a developer conveys an easement that will permit electric,  
90 cable or telephone service to be furnished to a subdivision, the developer shall, within 30 days after  
91 written request by a cable television operator or telephone service provider, grant an easement to that  
92 cable television operator or telephone service provider for the purpose of providing cable television and  
93 communications services to that subdivision, which easement shall be geographically coextensive with  
94 the electric service easement, or if only a telephone or cable service easement has been granted, then  
95 geographically coextensive with that telephone or cable service easement; however, the developer and  
96 franchised cable television operator or telephone service provider may mutually agree on an alternate  
97 location for an easement. If the final subdivision plat is recorded and does not include conveyance of a  
98 common or shared easement as provided herein, the local planning commission or agent designated by  
99 the governing body to review and act on submitted subdivision plats shall not be responsible to enforce  
100 the requirements of this subdivision;

101 7. For monuments of specific types to be installed establishing street and property lines;

102 8. That unless a plat is filed for recordation within six months after final approval thereof or such  
103 longer period as may be approved by the governing body, such approval shall be withdrawn and the plat  
104 marked void and returned to the approving official; however, in any case where construction of facilities  
105 to be dedicated for public use has commenced pursuant to an approved plan or permit with surety  
106 approved by the governing body or its designated administrative agency, or where the developer has  
107 furnished surety to the governing body or its designated administrative agency by certified check, cash  
108 escrow, bond, or letter of credit in the amount of the estimated cost of construction of such facilities, the  
109 time for plat recordation shall be extended to one year after final approval or to the time limit specified  
110 in the surety agreement approved by the governing body or its designated administrative agency,  
111 whichever is greater;

112 9. For the administration and enforcement of such ordinance, not inconsistent with provisions  
113 contained in this chapter, and specifically for the imposition of reasonable fees and charges for the  
114 review of plats and plans, and for the inspection of facilities required by any such ordinance to be  
115 installed; such fees and charges shall in no instance exceed an amount commensurate with the services  
116 rendered taking into consideration the time, skill and administrator's expense involved. All such charges  
117 heretofore made are hereby validated;

118 10. For reasonable provisions permitting a single division of a lot or parcel for the purpose of sale or  
119 gift to a member of the immediate family of the property owner in accordance with the provisions of  
120 § 15.2-2244; and

121 11. For the periodic partial and final complete release of any bond, escrow, letter of credit, or other  
122 performance guarantee required by the governing body under this section in accordance with the  
123 provisions of § 15.2-2245; and

124 12. *For a developer, if any portion of the affected property (i) is abutting property in a planned unit*  
125 *development governed by a property owners' association, (ii) is immediately across the street or road*  
126 *from a planned unit development governed by a property owners' association, or (iii) is located where*  
127 *members in a planned unit development governed by a property owners' association own property*  
128 *located within a five-mile radius of the affected property, to give written notice to such incorporated*  
129 *property owners' associations within the planned unit development at such time as prescribed in the*  
130 *ordinance.*

131 B. No locality shall require that any certified check, cash escrow, bond, letter of credit or other  
132 performance guarantee furnished pursuant to this chapter apply to, or include the cost of, any facility or  
133 improvement unless such facility or improvement is shown or described on the approved plat or plan of  
134 the project for which such guarantee is being furnished. Furthermore, the terms, conditions, and  
135 specifications contained in any agreement, contract, performance agreement, or similar document,  
136 however described or delineated, between a locality or its governing body and an owner or developer of  
137 property entered into pursuant to this chapter in conjunction with any performance guarantee, as  
138 described in this subsection, shall be limited to those items depicted or provided for in the approved  
139 plan, plat, permit application, or similar document for which such performance guarantee is applicable.