

LD9025749

SENATE BILL NO. 98

Offered January 17, 1994

A BILL to amend and reenact § 15.1-491.9 of the Code of Virginia, relating to affordable housing.

Patrons—Waddell; Delegate: Mims

Referred to the Committee on Local Government

Be it enacted by the General Assembly of Virginia:**1. That § 15.1-491.9 of the Code of Virginia is amended and reenacted as follows:**

§ 15.1-491.9. Affordable dwelling unit ordinances.

A. In furtherance of the purpose of providing affordable shelter for all residents of the Commonwealth, the governing bodies of (i) counties or cities adjacent to or completely surrounded by counties having the urban county executive form of government, (ii) cities completely surrounded by counties having the county executive form of government, (iii) cities with populations of more than 31,000 but less than 66,000, (iv) cities with populations of more than 140,000 but less than 160,000, (v) counties with a population of more than 40,000 but less than 45,000, (vi) counties that have a population of more than 64,000 but less than 73,000, (vii) counties that have a population of more than 34,600 but less than 36,000, and (viii) counties that have a population of more than 45,700 but less than 45,800 *body of any county, city or town* may by amendment to the zoning ordinances of such county or city or town 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 other 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.

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 county or city or town, 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, 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 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, 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 county or city or town 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 county or city or town 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

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60 same ratio of ten percent to six and one-quarter percent.

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

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

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

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

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

90 13. For reasonable regulations requiring the affordable dwelling units to be built and offered for sale
91 or rental concurrently with the construction and certificate of occupancy of a reasonable proportion of
92 the market rate units.

93 14. For a requirement that the prices for re-sales and re-rentals be controlled by the local housing
94 authority or local governing body or designee for a period of fifty years after the initial sale or rental
95 transaction for each affordable dwelling unit, provided that the zoning ordinance further provide for
96 reasonable rules and regulations to implement a price control provision.

97 15. For establishment of an affordable dwelling unit advisory board which shall, among other things,
98 advise the jurisdiction on sales and rental prices of affordable dwelling units; advise the housing
99 authority or local governing body or its designees on requests for modifications of the requirements of
100 an affordable dwelling unit program; adopt regulations concerning its recommendations of sales and
101 rental prices of affordable dwelling units; and adopt procedures concerning requests for modifications of
102 an affordable housing dwelling unit program. Members of the board, to be nine in number and to be
103 appointed by the governing body, shall be qualified as follows: two members shall be either civil
104 engineers or architects, each of whom shall be registered or certified with the relevant agency of the
105 Commonwealth, or planners, all of whom shall have extensive experience in practice in the ~~city or~~
106 ~~county, city or town~~; one member shall be a representative of a lending institution which finances
107 residential development in the ~~city or~~ county, ~~city or town~~; four members shall consist of a
108 representative from a local housing authority or local governing body or its designee, a residential
109 builder with extensive experience in producing single family detached and attached dwelling units, a
110 residential builder with extensive experience in producing multiple family dwelling units, and a
111 representative from either the public works or planning department of the ~~city or~~ county, ~~city or town~~;
112 one member shall be a representative of a nonprofit housing organization which provides services in the
113 ~~city or~~ county, ~~city or town~~; and one citizen of the ~~city or~~ county, ~~city or town~~. At least four members
114 of the advisory board shall be employed in the ~~city or~~ county, ~~city or town~~.

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

119 C. The sales and rental price for affordable dwelling units within a development shall be established
120 such that the owner/applicant shall not suffer economic loss as a result of providing the required
121 affordable dwelling units. "Economic loss" for sales units means that result when the owner or applicant

122 of a development fails to recoup the cost of construction and certain allowances as may be determined
123 by the designee of the governing body for the affordable dwelling units, exclusive of the cost of land
124 acquisition and cost voluntarily incurred but not authorized by the ordinance, upon the sale of an
125 affordable dwelling unit.

126 D. Nothing contained in this section shall apply to any elevator structure four stories or above.

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