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SENATE BILL NO. 1029

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Local Government
on January 29, 2013)

(Patron Prior to Substitute—Senator Reeves)

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

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2200, 15.2-2201, 15.2-2204, and 15.2-2211 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~~ *their* 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 concerns of military installations be recognized and taken into account in consideration of future development of areas immediately surrounding installations and that where practical, installation commanders shall be consulted on such matters by local officials*; 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.

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

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

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

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

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

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

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

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

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

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

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

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

102 **§ 15.2-2204. Advertisement of plans, ordinances, etc.; joint public hearings; written notice of**
103 **certain amendments.**

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

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

121 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 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

183 required by such act or by this chapter, provided a public hearing was conducted by the governing body
184 prior to such adoption or amendment. Every action contesting a decision of a locality based on a failure
185 to advertise or give notice as may be required by this chapter shall be filed within 30 days of such
186 decision with the circuit court having jurisdiction of the land affected by the decision. However, any
187 litigation pending prior to July 1, 1996, shall not be affected by the 1996 amendment to this section.

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

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

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

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

208 **§ 15.2-2211. Cooperation of local planning commissions and other agencies.**

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