



Religious Organizations as Affordable Housing Providers:

**Virginia SB 233 and Recent Legislation
from Other States**

Full paper available on the VHC website:



Policy Introduction :

To increase affordable housing stock, a few states are considering “faith housing” legislation to provide additional land for much-needed affordable housing and streamline the development process. Many religious institutions have also spoken in favor of this type of legislation as an opportunity to create a potential new revenue stream as congregations grow smaller.

This exploration of existing policy outlines the parameters of legislation passed in California, Oregon, Maryland, Minnesota, and Washington and legislation introduced in New York, and South Carolina.

Definition of Church in Virginia:

Church defined in the Code of Virginia: "Church" means a nonprofit religious organization, regardless of faith, that would be considered a church under the standards promulgated by the Internal Revenue Service for federal income tax purposes (i) that has been specifically recognized by the Internal Revenue Service as being exempt from taxation under § 501(c)(3) of the Internal Revenue Code or (ii) whose real property is exempt from local real property taxation under § 58.1-3606 of the Code of Virginia.

The term "church" includes any departments, regular schools of religious education, and other activities of a church that are not separate legal or business entities, including kindergartens, elementary and secondary schools, preschools, nurseries, and day care centers.



Exploring Other State Laws

California and Oregon are the only states that strongly limit local government's ability to restrict the development of affordable housing on religious property through local zoning ordinances and other regulations. Virginia's SB233, proposed in 2024, uses several sections of California's bill language and also grants development by-right.

Other state laws enacted, Maryland and Washington, incentivize rather than broadly allow affordable housing development on land owned by religious institutions.

New York's proposed legislation allows religious organizations to bypass local zoning laws and public review processes to build affordable housing. South Carolina's proposed legislation does not, instead it allows religious organizations who choose to build affordable housing qualify that property as tax exempt if it meets certain requirements.

Exploring Other State Laws

Research Highlights and Comparison to Virginia

Many other states do not limit the zoning exemptions or incentives to religious organizations, they are often expanded to include other non-profit organizations.

California's enacted legislation also includes higher education institutions.

Oregon's enacted legislation applies to land owned by religious organizations *and* publicly owned land.

Maryland's proposed legislation includes other nonprofit organizations, not exclusively faith-based organizations. While 501 (c)(3) religious organizations can benefit from the density bonuses offered in Maryland's bill, the intent of the bill was not focused on religious organizations as affordable housing providers and includes a variety of other unrelated provisions.

Exploring Other State Laws

Research Highlights and Comparison to Virginia

Virginia's proposed legislation creates an exemption to local zoning ordinances and regulations for religious organizations to construct affordable housing in all non-residential areas. Other enacted and proposed legislation allowing religious organizations to build affordable housing do not allow this development in all circumstances.

Virginia's 2024 proposed legislation, SB233, grants by-right zoning in any conditions while other state's enacted and introduced affordable housing for faith institutions bill language do not allow by-right development in all circumstances.

California grants by-right zoning in most circumstances but does not allow this type of development on properties close to properties used for industrial purposes.

Oregon does not allow this type of development on properties zoned for heavy industrial uses, lands where the local government determines the property cannot be adequately served by public services, properties within a 100-year floodplain, and areas outside of a designated urban growth boundary

New York's proposed legislation prohibits development on land in a manufacturing or industrial zoning district.

Exploring Other State Laws

Research Highlights and Comparison to Virginia

Minnesota's law only allows by-right development, or development through a conditional use permit, of standalone micro units, not multi-unit development projects, on religious properties in cities. Additionally, the micro units must be used to house chronically homeless individuals, extremely low-income individuals, and volunteers.

Maryland and **Washington's** passed legislation do not grant by-right zoning to these types of development projects. They grant density bonuses to qualifying projects.

Exploring Other State Laws

Research Highlights and Comparison to Virginia

Whether a religiously owned property maintains tax exempt status can be a source of confusion. Many religious properties used for affordable housing are not tax exempt.

Tax exemption in the Constitution of Virginia

Article X, Section 6(a)(2) of the Constitution of Virginia provides that “property owned and exclusively occupied or used by churches or religious bodies for religious worship” shall be exempt from state or local taxation. Code [§ 58.1-3606](#) states the General Assembly’s interpretation of the term “religious worship” in the Constitution:

Real property and personal property owned by churches or religious bodies, including (i) an incorporated church or religious body and (ii) a corporation mentioned in § 57-16.1, and exclusively occupied or used for religious worship or for the residence of the minister of any church or religious body, and such additional adjacent land reasonably necessary for the convenient use of any such property. Real property exclusively used for religious worship shall also include the following: (a) property used for outdoor worship activities; (b) property used for ancillary and accessory purposes as allowed under the local zoning ordinance, the dominant purpose of which is to support or augment the principal religious worship use; and (c) property used as required by federal, state, or local law.

Virginia Court Case Study

Property Tax Exemption Challenge by Locality Case Study: New Life in Christ Church v. City of Fredericksburg, Virginia

- New Life in Christ Church purchased a house in Fredericksburg to serve as a residence for a couple hired as youth ministers. Although Virginia law grants tax exemptions for property owned by religious organizations occupied by ministers, the City of Fredericksburg said this house did not qualify. Taxing Authority Consulting Services asserted that only one home would qualify for the housing tax exemption saying, “Virginia law provides a tax exemption for the church minister’s own residence, not every residence a church may own.”
- In 2022 the Virginia court ruled in favor of the City of Fredericksburg, and the Virginia Supreme Court and the U.S. Supreme Court declined to hear appeals on the case.

Exploring Other State Laws

Research Highlights and Comparison to Virginia

Tax exemption in religious organizations as affordable housing providers:

A second piece of enacted legislation from **Oregon** specifically amends existing Oregon law to provide tax exemptions for property of religious organizations held or purchased that is used to provide affordable housing to low-income households. Religious organizations may pursue this exemption status by meeting additional conditions. Many properties owned by religious organizations used for the development of affordable housing remain taxable.

South Carolina's proposed legislation says a religious organization may use its contiguous property for the purpose of building affordable housing without losing its property-tax exempt status

Many religious organizations throughout the country have carefully separated ownership structure to avoid taxable income jeopardizing their non-profit status.

Challenges to religious property exemptions outside of the scope of affordable housing have occurred in other states, with most judges finding that the religious organization must use the land for religious purposes to qualify for exemptions.

Exploring Other State Laws

Research Highlights and Comparison to Virginia

Affordability provisions and definitions differ across states that have enacted legislation allowing affordable housing development on land owned by religious institutions.

Both **California** and **Virginia's** bill language says that at least 75% of the affordable development's units must be for persons of low-income (20% can be for moderate income, 5% can be for staff). **California** ties their income parameters to HUD guidelines.

Oregon's enacted language features a more mixed-income environment.

- At least 50% of the residential units included in the development must be sold or rented as affordable housing to households with incomes equal to or less than 60% of the median family income for the county in which the property is located.

New York, and **South Carolina's** pending legislation also feature a more mixed-income definition when compared to California and Washington's enacted legislation.

Exploring Other State Laws

Research Highlights and Comparison to Virginia

Virginia's proposed legislation contains few development regulations compared to other enacted and introduced legislation.

California's law says projects must follow objective standards set by the local jurisdictions and obey parking minimums (with certain exceptions).

The law requires a development to provide off-street parking of up to one space per unit, unless a state law or local ordinance provides for a lower standard of parking, in which case the law or ordinance applies.

California developments under this law must be on land owned on or before January 1, 2024.

Oregon's law does not apply to land that a local government determines lacks adequate infrastructure and the local government may impose development requirements based on siting, design standards, and building permits. A local government may reduce the density or height of the density bonus allowed as necessary to address a health, safety or habitability issue, including fire safety, or to comply with a protective measure adopted pursuant to a statewide land use planning goal.

Exploring Other State Laws

Additional Provisions – Complete List of Bill Details Available in Document on the VHC website (density requirements, affordability structures, building regulations, scope and scale, etc.)

Maryland

Maryland's bill streamlined the zoning process for qualifying projects by limiting the number of public hearings local governments can require for eligible affordable housing projects to two to prevent lengthy project timelines.

The bill includes a requirement that an entity responsible for a qualifying development project must submit a public health impact assessment subject to approval by the Department of Housing and Community Development.

California

California developments must be on land owned on or before January 1, 2024.

California's law requires the prevailing wages for projects over 10 units and specified labor standards on projects over 50 units.

If the project is in a zone that does not allow residential uses, the development project shall be allowed a density of 40 units per acre and a height of one story above the maximum height otherwise applicable to the parcel.

Exploring Other State Laws

Additional Provisions – Complete List of Bill Details Available in Document on the VHC website (density requirements, affordability structures, building regulations, scope and scale, etc.)

Washington

The enacted legislation requires the Joint Legislative Audit and Review Committee to review the efficacy of the increased density bonus and report findings to the Legislature by December 1, 2030.

The legislation specifically says the religious organization may not discriminate against any person who qualifies as a member of a low-income household.

Virginia's deed restriction of 99 years is the lengthiest of any enacted or proposed legislation. California requires the property to remain affordable for a maximum of 55 years.

New York (proposed)

In New York's proposed legislation, no impact fees or other fees may be imposed by the locality.

Localities may regulate the construction of sidewalks and placement of curb cuts.

Exploring Other State Laws

Opposition

Local governments and environmental advocates often oppose legislation that grants by-right development without local oversight.

Opposition for these bills comes from 1) local government leaders opposed to overriding local zoning decisions and overwhelming public and emergency services, and 2) environmental advocates worried about the ability of a development to bypass environmental and sustainability standards. For example, California's legislation allows qualifying projects to bypass the California Environmental Quality Act.

New York's proposed legislation faces significant opposition.

- Nassau county, New York, has 1,100 churches, temples, and mosques and under the provisions of the proposed bill they could each build up to 50 units per acre. Many mayors opposed to this legislation say this has the potential to overwhelm local emergency services and local school capacity.

Virginia Court Case Study

First Amendment Challenge to Church Affordable Housing Development: Peter Glassman v. Arlington County, Virginia

- In 2010, a U.S. District Court judge threw out a First Amendment challenge to an affordable housing project above a church in Arlington County. The judge ruled that it did not violate the constitutional separation of church and state and there was not enough evidence to go forward.
- Peter Glassman failed to prove that Arlington County, in their partnership with a Baptist church to build apartments and enable the church to renovate, constituted advancing religion or enriching the church.

THANK YOU

A REPORT DETAILING LEGISLATION FROM EACH OF
THE INCLUDED STATES IS AVAILABLE ON THE VHC
WEBSITE

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