Exploration of Religious Organizations as Affordable Housing Providers: Virginia SB 233 and Recent Legislation and Laws from Other States

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. Faith housing refers to religious organizations using property they own that may be underused or unused to develop affordable housing and potentially become affordable housing providers. 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. For example, the Jewish Public Affairs Committee of California endorsed the state's 2023 legislation and described it as an option for fundraising when the laws make development more feasible.

This document begins with highlights and observations taken from the research and Virginia statues. The document contains the text of Virginia SB233, the Faith in Housing for the Commonwealth Act, as well as notes providing additional context on the provisions of the bill and overviews of legislation from other states. This exploration also outlines the parameters of legislation passed in California, Oregon, Maryland, Minnesota, and Washington and legislation introduced in New York and South Carolina.

Contents

Research highlights and observations:

Virginia's SB233, 2024, contains language taken directly from California's enacted legislation. In contrast, Virginia's proposed legislation does not contain several California provisions limiting development site qualifications and imposing requirements for development.

California and Oregon are the only states that limit local government's ability to restrict the development of affordable housing on religious property through local zoning ordinances and other regulations.

Other states, Maryland and Washington, have passed legislation that incentivizes rather than broadly allow affordable housing development on land owned by religious institutions.

- **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.
- **Minnesota** only allows the development of standalone micro-units in cities and restricts occupancy to chronically homeless or extremely low-income individuals. This use is either allowed by-right or through a conditional use permit.
- **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. Laws in other states allowing religious organizations to build affordable housing do not allow this development in all circumstances.**
    - During these states' legislative sessions, debates surrounding these pieces of legislation included limiting by-right development, like in areas zoned for industrial or manufacturing uses. This may help localities who are unable to pay for public services that are not in areas that have existing residential and emergency services. Areas away from residential areas may lack community services like transportation and grocery stores.

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

- **California** 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 (definition provided on page 12).

    - If a religious organization wishes to pursue a tax exemption on the affordable development property, additional qualifying property and affordability requirements must be met under a second piece of enacted legislation.

- **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 does not grant by-right zoning to these types of development projects. They grant a density bonus to qualifying projects.

    - **Maryland**'s language limited the number of public hearings in the project approval process to two hearings.

    - **Washington's** enacted legislation encourages participating religious organizations to work with local transit agencies to ensure appropriate services are provided to the development.

Whether a religiously owned property maintains tax exempt status can be a source of confusion. Tax exempt status is not guaranteed, and many religious properties used for affordable housing are not tax exempt.

- **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.

    - If the intent of Virginia's bill is to have these properties remain tax exempt and not-for-profit, specifically outlining that provision may provide clarification.

- If property tax exemption status is maintained, provisions saying the land must be owned before a specific date (like the enactment) are often considered beneficial because it means the locality is not losing out on property taxes – that land is already exempt.

- There are rules about what non-profit organizations, such as religious organizations, can and cannot do surrounding making money. Many religious organizations throughout the country have carefully separated ownership structure to avoid taxable income jeopardizing their non-profit status. For example, some have separated mixed-use developments into separate condominiums owned by wholly separate entities.

- Many religious organizations who have constructed affordable housing developments have formed a partnership with an independent developer to lead the project while others formed their own affiliated nonprofit community development organization to lead development.

    - According to a survey conducted by the Emory Center for the Study of Law and Religion in 2023, most participating congregations opted to partner with an independent developer.

- 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. In those determinations, owning the property is not enough to qualify for tax-exempt status.

Affordability provisions and definitions differ across states that have enacted legislation allowing affordable housing development on land owned by religious institutions. Virginia lacks a clear definition of income.

- 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).

    - Unlike the other bills studied **Virginia's** legislation lacks income parameters of what is considered a low-income or moderate-income household. **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.

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.

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.

Constitution and Code of Virginia:

Tax Exemption in Code 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 and does so expansively, as set forth below:

> A. Pursuant to the authority granted in Article X, Section 6 (a)(6) of the Constitution of Virginia to exempt property from taxation by classification, the following classes of real and personal property shall be exempt from taxation:
>
> 2. 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 Studies

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.

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.

Definition of Church in Virginia

Church is defined in the Code of Virginia as: "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.

The term "church" does not include broadcasting television organizations, such as evangelical television and radio ministries, missionaries, political action committees (PACs), affiliated entities separately incorporated from a nonprofit religious organization, and camps and conference centers. However, a limited exemption is available to camps and conference centers as set forth in subsection F of this section.

State Legislation

Virginia: Proposed in 2024, Continued to 2025

SB233 was introduced during the 2024 Virginia General Assembly Session where legislators decided to send the issue to the Housing Commission for further study and potential modifications. The text of VA SB233 is in blue and notes on the various sections are in red.

FAITH IN HOUSING FOR THE COMMONWEALTH ACT.

§ **36-176**. Definitions.
As used in this chapter, unless the context requires a different meaning:

"Faith land" means real estate (i) owned on or before January 1, 2024, or owned for a period of not less than five years, by a religious organization and (ii) for which the religious organization initially retains a majority ownership interest.
"Housing development" means the same as that term is defined in § **36-141**.
"Locality" means the same as that term is defined in § **15.2-102**.
"Persons of low income" means the same as that term is defined in § **36-3**. (Code section pertains to Housing Authorities)

"Persons of low income" means persons or families determined by the authority to lack the amount of income which is necessary to enable them to live in decent, safe and sanitary dwellings.

"Persons of moderate income" means the same as that term is defined in § **36-3**. (Code section pertains to Housing Authorities)

"Persons of moderate income" means persons or families determined by the authority to lack the amount of income necessary to obtain affordable housing.

"Religious organization" means a church, church diocese, religious congregation, religious association, or religious society.

§ **36-177**. Housing development; religious institutions.
A. Notwithstanding any inconsistent provision of a locality's general plan, specific plan, zoning ordinance, or regulation, upon the request of a religious organization, a housing development may be constructed if:

1. The housing development is located on faith land;
2. All the housing development's total units, exclusive of a manager's unit or units, are for persons of low income, except that up to 20 percent of the total units in the development may be for persons of moderate income, and five percent of the units may be for staff of the religious organization that owns the land; and

This is the same language California used in their 2023 legislation but does not use the same definitions of low or moderate income. California ties their income definitions to the United States Housing Act. Providing a narrower definition of income could provide helpful guidance when approving applicants.

3. The housing development remains dedicated for persons of low income at the levels described in subdivision 2 for at least 99 years.

B. A housing development constructed pursuant to this chapter shall be managed by a nonprofit property manager with experience managing affordable housing that has entered into an agreement for such purpose with the religious organization.

C. A housing development constructed pursuant to this chapter may include ground-floor facilities, such as child care centers, operated by community-based organizations for the provision of recreational, social, or educational services for use by the residents of the development and members of the local community in which the development is located and any preexisting religious institutional use, if such use is limited to the preexisting total square footage of the improvements on the property. This language is similar to California's, but Californias 2023 passed legislation limits ancillary uses to childcare centers and facilities operated by community-based organizations. These uses also only apply to residential zoned areas. Other areas may include commercial uses that are permitted without a conditional use permit or planned unit development permit. California's also includes additional criteria that need to be met for additional use, such as religious institutional use, in the development. These criteria include parking requirements, restrictions that limit use to the same operational conditions as contained in the previous conditional use permit, and square footage requirements that match the requirements of the Virginia bill.

D. If the locality's zoning does not permit residential uses, the housing development shall be allowed a density of 40 units per acre and a height of one story or 15 feet above the maximum height otherwise applicable to the parcel. If the locality allows for greater residential density or building heights on that parcel, or an adjoining parcel, the greater density or building height shall apply. This language copies California's 2023 legislation.

Additional provisions included in the California legislation, as well as legislation from Washington and Maryland, are outlined in the remainder of the document.

California: Passed in 2023

Allows by-right approval of certain affordable housing development projects for higher education and religious institutions not located close to industrial zones.
Additional context: California has the largest number of homeless individuals in the United States, representing 28% of the total unhoused population in the country.

California's SB 4, 2023, streamlines the approval and permitting process of affordable housing on land owned by either a religious or educational institution. Approval of these affordable housing projects is ministerial, allowing them to avoid discretionary processes such as the California Environmental Quality Act. To be eligible for this by-right process, the project must adhere to these criteria:

- affordability requirements;
    - 100% of the units must be affordable to lower-income households, with an option to make 20% of the units affordable to moderate-income households and 5% of the units may be for staff of the religious or higher education institution that owns the land.

    - The qualifications for lower income households in the law are based on the qualifying limits for lower income families established in Section 8 of the United States Housing Act.
    - Low or moderate income is defined as families or persons whose income does not exceed 120 percent of the area median income, adjusted for family size based on factors adopted in Section 8 of the United States Housing Act.
        - The rent or sales price for a moderate-income unit shall not exceed 30 percent of income for a moderate-income household.
    - The rent or sales price for a moderate-income unit shall be affordable and not exceed 30 percent of income for a moderate-income household or homebuyer for a unit of comparable size in the same ZIP Code where the project is located.
    - The applicants are responsible for providing evidence that they meet these requirements.
    - All units in the development project, exclusive of manager units, are subject to a deed restriction maintaining these affordability standards for a period of either 45 or 55 years.
- compliance with objective standards set by the local jurisdiction;
    - The law also contains provisions that allow localities to maintain a level of control over their objective planning standards. If the local government determines that the proposed development conflicts with any of the objective planning standards specified in the law, it shall provide the development proponent with written documentation of which standards are in conflict within specified time frames. If applicable, an improvement that is deemed necessary to implement shall be undertaken by the developer.
    - This section in the bill also exempts projects from the requirements of the California Environmental Quality Act if it is following the local subdivision ordinance.
- parking minimums (with certain exceptions);
    - A development under this state law requires off-street parking of up to one space per unit, unless state law or local ordinance provides for a lower standard of parking.
    - Additional parking requirements are prohibited if it is located within one-half mile walking distance of public transit or is within one block of a car share vehicle.
- prevailing wages for projects over 10 units and specified labor standards on projects over 50 units;
- restrictions on locations close industrial uses; and
    - the development cannot be adjoined to any site where more than one-third of the square footage on the site is dedicated to light industrial use.
        - Parcels separated by only a street or highway are considered adjoined.
    - The development cannot be located within 1,200 feet of a site that is currently a heavy industrial use or a site where the most recent permitted use was a heavy industrial use.

    - This provision was added as an amendment to prohibit projects in proximity to specified industrial sites and oil and gas infrastructure. The senator who introduced the bill, Senator Wiener, and other sponsors initially objected to the change. They argued that communities located in industrial areas are often in the most need of affordable housing.
- must be on land owned on or before January 1, 2024 by an independent institution of higher education or religious institution.

The affordable development may include the following **ground floor** ancillary uses:

- In a single-family residential zone, ancillary uses are limited to childcare centers and facilities operated by community-based organizations for the provision or recreational, social, or educational services for use by the residents of the development and members of the local community in which the development is located.
- In all other zones, the development may include commercial uses that are permitted without a conditional use permit or planned unit development permit.
- The development may include any religious institutional use or any use that was previously existing and legally permitted if:
    - The total square footage of nonresidential space does not exceed the amount previously existing or permitted, meaning the space can't be expanded.
    - The total parking requirement for nonresidential space does not exceed the lesser of the amount existing or of the amount required by a conditional use permit.

The California law outlines the following density requirements:

- If the development project is in a residential zone, the project shall be allowed the applicable density for lower income households and a height of one story above the maximum height otherwise applicable to the parcel. The local government may allow for greater residential density on that parcel and in that case the greater density would apply.
    - The development projects in residential zones are also eligible for density bonuses, incentives, concessions, waivers, or reductions of development standards and parking ratios (Cal. Gov. Code 65915-65918).
        - According to the Code of California, a local government must adopt procedures and timelines for processing a density bonus application and must approve one density bonus if certain criteria are met. That criteria includes a variety of requirements and provisions that apply to projects that include units being set aside for moderate, lower, and very low-income households, senior housing developments, units for transitional foster youth, lower income students, and more.
- 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. The local government may allow for greater density on that parcel and in that case the greater density or height would apply.

    - These projects are also eligible for the same bonuses, incentives, concessions, waivers, or reductions outlined above.

The main opponents of this legislation were environmental advocates who argued that the bill risks environmental safety and sustainability by bypassing certain approval processes.

According to the California law, a qualified developer that contracts with a nonprofit corporation may receive a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families with financing in the form of zero interest rate loans.

Tax exemption: Law passed in 2022 allows for "welfare exemptions,":

Provides that existing property tax law, in accordance with the California Constitution, provides for a ""welfare exemption"" for property used exclusively for religious, hospital, scientific, or charitable purposes and that is owned or operated by certain types of nonprofit entities, if certain qualifying criteria are met. Requires that a unit continue to be treated as occupied by a lower income household if the owner is a community land trust whose land is leased to low-income households.

(1) Existing property tax law, in accordance with the California Constitution, provides for a "welfare exemption" for property used exclusively for religious, hospital, scientific, or charitable purposes and that is owned or operated by certain types of nonprofit entities, if certain qualifying criteria are met. Under existing property tax law, property that meets these requirements that is used exclusively for rental housing and related facilities is entitled to a partial exemption, equal to that percentage of the value of the property that is equal to the percentage that the number of units serving lower income households represents of the total number of residential units, in any year that any of certain criteria apply, including that the property be subject to a legal restriction that provides that units designated for use by lower income households are continuously available to or occupied by lower income households, at rents not exceeding specified limits. For the 2018–19 fiscal year through the 2027–28 fiscal year, in the case of an owner of property receiving a low-income housing tax credit under specified federal law, existing property tax law requires that a unit continue to be treated as occupied by a lower income household for these purposes if the occupants were lower income households on the lien date in the fiscal year in which their occupancy of the unit commenced and the unit continues to be rent restricted, notwithstanding an increase in the income of the occupants of the unit to 140% of area median income, adjusted for family size.

Washington: Passed in 2019

Religious organizations receive more allowable density than zoning typically allows for building affordable housing on their land. The housing must be affordable to households earning less than 80% of the area median income and must remain affordable for at least 50 years regardless of ownership changes. This bill does not allow by-right development in all areas or mention bypassing approval processes, the project must be in an urban growth area.

Washington's HB1377 requires cities and counties to allow an increased density bonus for any affordable housing development of single or multi-family residences located on real property owned or controlled by a religious organization if the affordable housing development:

- is set aside, or occupied exclusively by, low-income households. Low-income household is defined as a household whose adjusted income is less than 80 percent of the median family income;

- is part of a lease or other binding obligation that requires development to be used exclusively for affordable housing purposes for at least 50 years, even if the religious organization no longer owns the property; and
- does not discriminate against any person who qualifies as a member of a low-income household.

This law affects a city planning under certain planning enabling statutes, or a city or county fully planning under Washington's Growth Management Act (GMA). Additionally, an affordable housing development created by a religious institution within a city or county fully planning under the GMA must be located within an urban growth area.

A city or county may determine the scale and scope of the density bonus to be consistent with local needs if it receives a request from a religious organization for the density bonus. The religious organization must pay all fees, mitigation costs, and other applicable charges. The organization should also work with local transit agencies to ensure appropriate transit services are provided to the affordable housing development.

“Affordable housing development,” is defined as a proposed or existing structure in which 100 percent of all single-family or multifamily residential dwelling units within the development are set aside for or are occupied by low-income households at a sales price or rent amount that may not exceed 30 percent of the income limit for the low-income housing unit.

The legislation also 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 review must include a recommendation on whether the incentive should continue without change, be amended, or repealed.

Oregon: Two Bills Passed in 2021

A bill passed in 2021 (SB 8) says that a local government shall allow affordable housing development on land owned by a public body or religious corporation without requiring a zoning change, with few exceptions.

An additional bill was passed (HB 2008) allows religious institutions to maintain their tax-exempt status when providing affordable housing. It amended existing law to provide tax exemption for property of religious organizations held or purchased that is used to provide affordable housing to low-income households and limit local government's ability to restrict aspects of these developments. The revised law comes with additional conditions not required in SB 8 meaning tax exemption is not guaranteed and must be sought out by the religious organization through additional compliance.

Oregon SB 8, 2021

This legislation requires local governments to approve the development of certain affordable housing, and not require a zone change or conditional use permit, on land zoned to allow religious assembly or as public lands. Qualifying land must be owned by a public body or a religious nonprofit.

However, this applies only to the development of housing within a designated urban growth boundary. Additionally, these requirements do not apply to land that a local government determines lacks adequate infrastructure, is zoned for heavy industrial uses, or on property that: contains a slope of 25% or greater; is within a 100-year floodplain; or is constrained by state land use regulations based on natural disasters and hazards or natural resources.

A local government shall allow affordable housing, and may not require a zone change or conditional use permit for affordable housing on property if:

- the housing is owned by a public body (ex. Housing Authority) or non-profit religious organizations;
- the land is within an urban growth boundary;
- the land is not designated for heavy industrial uses;
    - Excluding heavy industrial zones, land zoned for industrial uses can be used for this type of development if it is publicly owned or adjacent to lands zoned for residential or school uses.
- the locality has determined the development has adequate infrastructure and can be adequately served by water, sewer, storm water drainage or streets;
- the land is not within a 100-yeaer floodplain; and
- the land is not constrained by state land use regulations based on natural disasters and hazards or natural resources.

Local governments may still impose development requirements based on siting and design standards and building permits.

"Urban growth boundary"- Land inside the urban growth boundary supports urban services such as roads, water and sewer systems, parks, schools and fire and police protection. The boundary is used to prevent urban sprawl and promote the efficient use of land, public facilities and services inside the boundary.

"Affordable housing," in this law means each unit on the property is available to own or rent to families with incomes of 80 percent or less of the area median income. Affordability must be enforced for a duration of no less than 30 years. The law lowered the existing time period in which a project would be considered an affordable development from 40 years to 30 years.

Additional language says at least 50 percent of the residential units provided by religious organizations must be affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located.

The law also provides increased density provisions in localities where there is no consideration of any local density bonus for affordable housing. 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.

- For property with existing maximum density of 16 or fewer units per acre, 200 percent of the existing density and 12 additional feet;

- For property with existing maximum density of 17 or more units per acre and 45 or fewer units per acre, 150 percent of the existing density and 24 additional feet; or
- For property with existing maximum density of 46 or more units per acre, 125 percent of the existing density and 36 additional feet.

Oregon HB 2008, 2021

Tax exemption status is extended in this law to include land and buildings on the land held or used by a religious organization solely to provide affordable housing to low-income households including, but not limited to, any portion of the property for any period in which the portion of the property is rented out as affordable to low-income households. This bill comes with additional conditions on the religious organization separate from SB 8. A religious organization does not have to seek out this exemption, many times these properties are still taxed.

- "Affordable" in this law means housing that is affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the development is built or for the state, whichever is greater, that is subject to an affordable housing covenant that maintains the affordability for a period of not less than 60 years from the date of the certificate of occupancy.

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.

Under Oregon HB 2008, for properties owned by a nonprofit corporation organized as a religious corporation, a local government:

- May apply only restrictions or conditions of approval to the development that are
    1. Clear and concise; or
    2. Discretionary standards related to health, safety, habitability or infrastructure

        - The Oregon Land Use Board of Appeals found that approval standards are not clear and objective if they impose subjective, value-laden analyses that are designed to mitigate impacts of the development on (1) the property to be developed or (2) the adjoining properties or community. The standards and conditions may include, but are not limited to, provisions regulating density and height of development. Development standards may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

- Shall approve the development of affordable housing on property NOT zoned for housing if:
    1. The property is not zoned for industrial uses; and
    2. The property is contiguous to property zoned to allow residential uses
- The development must comply with applicable land use regulations and meet the standards for residential development in the underlying zone.

Affordable housing under this section of the Code of Oregon may be subject only to the restrictions applicable to the contiguously zoned residential property without requiring that the property be rezoned for residential uses. The zoning of the property with the greatest density applies.

Maryland: Passed in 2024

Highlight: This bill allows an increase in allowable density in certain zoning areas for faith communities and other nonprofits building housing on their land where at least 25% of the units are subsidized and income restricted. The bill does not grant by-right development.

Current Status: Passed, Governor signed into law

- House: 98 Yeas, 38 Nays
- Senate: 31 Yeas, 13 Nays

Maryland's HB538/SB484, the Housing Expansion and Affordability Act of 2024, would streamline the zoning process and require localities to allow an increase in allowable density and uses for qualifying projects in specified zoning areas (outlined below) for 1) specified property formerly owned by the State, 2) property within one mile of a rail station, and 3) specified land that is wholly owned by nonprofits, such as churches, or that includes improvements owned by an entity that is controlled by a nonprofit organization. This bill is a request of Governor Moore. Moore's administration said, "density bonuses would be "sensitive to local zoning decisions."

- Qualifying nonprofit projects must contain at least 25% of units that are affordable dwelling units and be deed-restricted to include 25% of units that are affordable dwelling units for a period of at least 40 years.
    - An affordable dwelling unit is defined as a unit that is affordable to households earning 60% or less of the area median income.

A locality must allow the density of a qualified project to exceed the otherwise allowable density in an area zoned for:

- exclusively for single-family residential use, may include middle housing units;
    - "middle housing," means: duplexes, triplexes, quadplexes, cottage clusters, or town houses
- exclusively for multifamily residential use, (1) must have a density limit that exceeds by 30% the allowable density in that zone for uses that are not part of a qualified project and (2) may consist of mixed-use;
- exclusively for nonresidential use, may consist of mixed-use, with density limits that do not exceed the highest allowable density in the local jurisdiction's multifamily residential zones;
- for mixed-use, may include 30% more housing units than are allowed in that zone for uses that are not part of a qualified project; and
- the density of a qualified project may not exceed the density otherwise authorized in a district or zone located on agricultural land or conservation property.

A locality may not impose any unreasonable limitation or requirements for a qualified projects including limitations concerning: 1) height; 2) setback; 3) bulk; 4) parking; 5) loading, dimensional, or area; or 6) similar requirements.

The bill also limited 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. The Public health impact shall assess the potential impact associated with the proximity of the qualified project to any health hazards within the area zoned for nonresidential use. The Department may not approve the public health impact assessment if the assessment shows that residential use in the nonresidential zone would present a substantial risk to the health and safety of the residents.

Minnesota: Passed in 2023

Cities must allow faith communities, either by permitted use or conditional use, to build micro units on religious property to house chronically homeless individuals, extremely low-income individuals, and volunteers. The micro unit dwellings on religious property are referred to as "sacred communities."

Under this law, cities have few options to regulate the sacred communities. Cities may require setbacks or determine if the land use is permitted by right, by conditional use permit, or by planned unit development.

Definitions related to approved sacred community residents:

- An individual who meets the definition of being chronically homeless is unhoused and lives or resides in a place not meant for human habitation, a safe haven, or an emergency shelter for at least one year, or on at least four separate occasions in the last three years. It also refers to an adult head of household, or a minor head of household, with a diagnosable substance use disorder, serious mental illness, developmental disability, post traumatic stress disorder, cognitive impairments resulting from a brain injury, or chronic physical illness or disability, including the co-occurrence of two or more of those conditions.
- "Extremely low income," is defined as an individual who has an income that is equal to or less than 30% of the area median income.
- A "designated volunteer," is an individual who has not experienced homelessness and is approved by the religious institution to live in the sacred settlement as their sole form of housing. There is no required training, education, experience, or required services volunteers must provide outlined in the legislation.

All micro units must meet certain standards for inclusion in a sacred community on religious property. All micro units are required to:

- be built to the requirements of the American National Standards Institute Code 119.5 to ensure safety;
- be no more than 400 square feet;
- be built on a permanent chassis and anchored to pin foundations;
- include smoke and carbon monoxide detectors;
- comply with municipal setback requirements if established by ordinance or be set back on all sides by at least 10 feet if no ordinance exists;

- have access to water and electric utilities either by connecting the units to the principal building or providing access to permanent common area facilities for kitchen, toilet, bathing, and laundry consistent with Minnesota boarding house requirements;
- have exterior material compatible in appearance, durability, and composition to materials used in standard residential construction; and
- obtain permits or inspections required by the municipality or utility company for micro units that connect to utilities.

The religious organization using religious property to construct a sacred settlement must meet minimum operation standards. Participating religious organizations are required to:

- obtain the appropriate level of insurance;
- have between one third and 40% of the micro units occupied by designated volunteers;
- obtain authorization by a municipality either by permitted or conditional use;
- annually certify to the local unit of government that it has complied with the eligibility requirements for residents;
- adhere to all applicable Minnesota laws governing landlords and tenants; and
- provide a written plan to the city in which the settlement is approved that includes:
    - Plans for the disposal of water and sewage
    - Adequate parking, lighting, and emergency vehicle access
    - Protocols for security and addressing issues that arrive within the settlement
    - Safety protocols for severe weather

Unless the municipality has designated sacred communities meeting the requirements of the legislation as a permitted use, a sacred community must be approved and regulated as a conditional use without the application of additional standards not included in the language. When approved, additional permitting is not required for individual micro units.

New York: Pending in 2023-2024 Legislative Session

New York lawmakers are proposing a bill that would let religious organizations override local zoning laws and the public review process if they agree to build affordable housing on their property. Certain development standards also need to be met, including mandatory mixed-use housing or 100% affordable units, separate density limits for the city and jurisdictions outside the cities, and developers must undergo a state-run real estate training program.

Current bill status: In Senate Committee Housing, Construction and Community Development Committee. The New York Legislative Session ends on June 6, 2024.

Under the provisions in this bill, localities must allow the construction and occupation of residential buildings by-right on any qualifying site to the specified densities.

- The religious corporation owned land must not be in a designated manufacturing or industrial zoning district.

- Affordable in this bill is defined as a housing unit affordable to a specific percentage of the applicable area median income, as defined annually by the U.S. Department of Housing and Urban Development.
    - The units can be either owned or rental units.

If passed, religious groups could build up to 30 units per acre in municipalities with fewer than 50,000 residents and up to 50 units per acre in all larger places except for New York City, which has a different density measure.

- In a locality with fewer than 50,000 people, religious institutions may build up to a height of 35 feet or the height of the tallest existing building. A density of 30 units per acre is allowed in these conditions.
- In a locality with more than 50,000 people but less than one million, religious organizations may build up to a height of 55 feet, or the height of the tallest building, and up to a density of fifty residential units per acre.
    - The new developments do not have to adhere to any other regulations provided in the zoning district where they are located other than the bulk and height regulations outlined in the bill.
- In a locality with more than one million residents a height of up to 55 feet or the height of the tallest building is allowed. Additionally, a density floor area ratio of 2.2 square feet is allowed.
    - If a qualifying site is located within eight hundred feet of a zoning district that permits a greater height or density, those maximums apply.
    - The new developments do not have to adhere to any other regulations provided in the zoning district where they are located other than the bulk and height regulations outlined in the bill.

The law would allow religious groups to bypass site plan review by planning boards and would not require an environmental impact statement.

Localities must approve these projects within 60 days, if they do not, or if they deny a project, they may be subjected to a court proceeding and attorney's fees and costs that arise out of that special proceeding.

If a religious corporation disposes of land via sale or lease to develop residential housing, an official person of that corporation must have attended and received a certificate of completion of a training course on real estate development and affordable housing. The requirements of a qualifying course are outlined in the bill.

While the bill bypasses many aspects of local control, localities may regulate the following, provided the regulation is reasonable and does not impede development:

- The construction of sidewalks
- Twenty feet rear yard setbacks and ten feed of side yard setbacks
- Appropriate placement of curb cuts for accessory parking or loading that ensure public safety and access to the building.

Localities may not require any additional standards or conditions of approval other than state law, building codes, and fire codes. Additionally, localities are not allowed to require:

- Accessory off-street parking
- Minimum, maximum, or average unit sizes
- The number of allowable units based on lot size or other criteria, other than the densities outlined in the bill
- Prioritization of housing units to residents of certain neighborhoods or jurisdictions
- Prioritization of housing units for any age group
- Mandatory affordability requirements or minimum income standards other than what is outlined in the bill
- Minimum unit purchase price

Developments constructed pursuant to this legislation would be limited to a permitting issue price of one quarter dollar per square foot. No impact fees or other fees may be imposed by the locality.

Affordability requirements

- All residential buildings constructed under the provisions of this bill with fewer than one million inhabitants must set aside twenty percent of the residential floor area for households earning an average of 80% of AMI.
- In a city with more than one million inhabitants, a residential building must provide affordable housing under one of the following options:
    - 25% of residential floor area is for households earning an average of 60% AMI provided that a minimum of 5% of units are affordable to households at 40% of the AMI;
    - 30% of the residential floor area is for households earning an average of 80% AMI; or
    - 20% of the residential floor area is for households earning an average of 40% of AMI
- The amount of affordable floor area required is calculated based on an equation outlined in the bill.
    - Buildings may contain units affordable to a variety of incomes if they meet the parameters outlined in the bill.
    - No affordable unit shall be rented to any household with an income greater than 100% AMI.
    - The affordable units must be indistinguishable from the other units in the building.
- The properties must be restricted by mechanisms such as a declaration of restrictive covenants or a regulatory agreement that ensures the affordable units will remain subject to these affordability regulations for the life of the building.

The bill faces significant opposition from local governments and lawmakers opposed to overriding local zoning. It is facing pushback from local communities who are concerned allowing religious institutions to bypass local zoning laws and build “wherever they want” will change the fabric of communities. Nassau county has 1,100 churches, temples, and mosques and under the provisions of the 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. It is like Governor Kathy Hochul’s 2023 New York Housing Compact which was scrapped due to strong opposition from local governments.

South Carolina: Pending in 2024 Legislative Session

Provides that a religious organization recognized as a 501 (c)(3) may build certain affordable housing on property owned by the religious organization and maintain its property tax-exempt status.

Last Action: been referred to the Committee on Labor, Commerce, and Industry. South Carolina's General Assembly Session ends May 9, 2024.

Religious Institutions Affordable Housing Act:

A religious organization recognized by the IRS as a 501 (c) (3) may use its contiguous property for the purpose of building affordable housing without losing its property-tax exempt status.

Affordable housing means a dwelling unit that has an annual rent of 60% or less of the median household income of the county in which the affordable housing is located. The units may include multifamily units, duplexes, single-family houses, or a combination.

In order for the affordable housing to qualify as tax exempt:

1. the religious institution shall maintain a minimum of ten percent ownership in the affordable housing;
2. the affordable housing project must have at least ten units; and
3. at least fifty percent of the units must be set aside as affordable housing.

Other provisions of South Carolina's proposed bill include:

- The religious institution shall submit an annual report to the South Carolina Housing Authority demonstrating compliance with the terms outlined in the bill.
- Any religious institution that owned property before July 1, 2024, may build affordable housing on that property regardless of whether it is contiguous property.

Miscellaneous. Notes

Housing for the Elderly

Mississippi Code exempts nonprofit, religious, charitable, and educational organization property from taxes if the property is exclusively used as a nursing home or to provide services to the elderly, disabled, or mentally impaired.

Conclusion

While there is a lot of conversation surrounding religious institutions becoming affordable housing providers, only a few states have passed legislation granting religious organizations zoning exemptions for development or legislation providing development incentives for religious organizations to become affordable housing providers.

California and Oregon are currently the only two states that have enacted some form of by-right development to religious organizations who want to become affordable housing providers. Both California and Oregon expand that by-right development beyond religious organizations to other nonprofit organizations or public bodies. Maryland and Washington passed incentives in the form of density bonuses to encourage religious organizations to build affordable housing, although Maryland's legislation does not specifically target religious organizations.

These laws are often complex and come with a variety of additional considerations, like tax exemption implications. Virginia's proposed legislation does not specify whether a property remains tax exempt, and at least one Virginia court case found that a religious organization simply owning a property does not guarantee tax exemption due to terms set forth in the Virginia Constitution. Oregon passed a second piece of legislation specifically outlining terms for tax exemption when a religious institution becomes an affordable housing provider. Further clarification may be needed when it comes to tax exemptions for affordable housing developments owned or operated by religious organizations in Virginia.

Many religious organizations across the country have expressed interest in developing affordable housing on their property and have done so without the existence of statewide laws granting zoning exemptions. Advocates for legislation granting by-right development to religious organizations to construct affordable housing say going through typical approval processes is often burdensome and serves as a barrier to development. In response, California and Oregon changed their laws and Virginia proposed legislation closely matching sections of California’s bill language.

While Virginia uses several sections of California’s bill, it lacks additional provisions and regulations set forth in legislation that has been enacted in California and Oregon. Further consideration of enacted legislation in other states may be beneficial while Virginia considers their own faith housing legislation.