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## SENATE BILL NO. 834

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Local Government  
on January 27, 2020)

(Patron Prior to Substitute—Senator McClellan)

A BILL to amend the Code of Virginia by adding a section numbered 15.2-2305.1, relating to affordable housing dwelling unit ordinances.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 15.2-2305.1 as follows:

§ 15.2-2305.1. Affordable housing dwelling unit ordinances.

A. In furtherance of the purpose of providing affordable shelter for all, the governing body of any locality, other than localities to which § 15.2-2304 applies, may by amendment to the zoning ordinances of such locality 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 housing affordable to low-and-moderate-income citizens by providing for increases in density to the applicant in exchange for the applicant voluntarily electing to provide such affordable housing. Any local ordinance 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. Any local ordinance may authorize the governing body to (i) establish qualifying jurisdiction-wide affordable dwelling unit sales prices based on local market conditions, (ii) establish jurisdiction-wide affordable housing dwelling unit qualifying income guidelines, and (iii) offer incentives other than density increases, such as reductions or waivers of permit, development, and infrastructure fees, as the governing body deems appropriate to encourage the provision of affordable housing. Counties to which § 15.2-2304 applies shall be governed by the provisions of § 15.2-2304 for purposes of the adoption of an affordable housing dwelling unit ordinance.

B. Any zoning ordinance establishing an affordable housing dwelling unit program pursuant to this section may include reasonable regulations and provisions as to any or all of the following:

1. For application of the requirements of an affordable housing dwelling unit program to any site, as defined by the locality, or a portion thereof at one location that is the subject of an application for rezoning or special exception or site plan or subdivision plat which yields, as submitted by the applicant, at an equivalent density greater than one unit per acre and that is located within an approved sewer area.

2. The waiver of any fees associated with the construction, renovation, or rehabilitation of a structure, including but not limited to building permit fees, application review fees, and water and sewer connection fees.

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

4. For establishment of a local housing fund as part of its affordable housing dwelling unit program to assist in achieving the affordable housing goals of the locality pursuant to this section. The local housing fund may be a dedicated fund within the other funds of the locality, but any funds received pursuant to this section shall be used for achieving the affordable housing goals of the locality. A locality shall not condition the submission, review, or approval of any application for a housing development upon a contribution by the applicant to the locality's housing trust fund.

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

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

7. For a local housing authority or local governing body or its designee to have an exclusive right to purchase up to one-third of the for-sale affordable housing dwelling units within a development within 90 days of a dwelling unit being completed and ready for purchase, provided that the remaining two-thirds of such units be offered for sale exclusively for a 90-day period to persons who meet the income criteria established by the local housing authority or the local governing body or its designee.

8. For a local housing authority or a local governing body or its designee to have an exclusive right to lease up to a specified percentage of the rental affordable dwelling units within a development within a controlled period determined by the housing authority or the local governing body or its designee, provided that the remaining for-rental affordable dwelling units within a development be offered to

60 persons who meet the income criteria established by the local housing authority or the local governing  
61 body or its designee.

62 9. For the establishment of jurisdiction-wide affordable housing dwelling unit sales prices by the  
63 local housing authority or the local governing body or its designee, initially and adjusted semiannually,  
64 based on a determination of all ordinary, necessary, and reasonable costs required to construct the  
65 affordable dwelling unit prototype dwellings by private industry after considering written comment by  
66 the public, the local housing authority, or an advisory body to the local governing body, and other  
67 information such as the area's current general market and economic conditions, provided that sales  
68 prices do not include the cost of land, on-site sales commissions, and marketing expenses, but may  
69 include, among other costs, builder-paid permanent mortgage placement costs and buy-down fees and  
70 closing costs except prepaid expenses required at settlement.

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

77 11. For a requirement that the prices for the sales and rentals of affordable dwelling units  
78 subsequent to the initial sale or rental transaction be controlled by the local housing authority or the  
79 local governing body or its designee for a period of not less than 15 years nor more than 50 years after  
80 the initial sale or rental transaction for each affordable dwelling unit, provided that the ordinance  
81 further provides for reasonable rules and regulations to implement a price control provision.

82 C. For any building that is four stories or taller and has an elevator, the applicant may request, and  
83 the locality shall consider, the unique ancillary costs associated with living in such a building in  
84 determining whether such housing will be affordable under the definition established by the locality in  
85 its ordinance adopted pursuant to this section. However, for localities under this section in Planning  
86 District 8, nothing in this section shall apply to any elevator structure four stories or taller.

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

93 E. Any zoning ordinance establishing an affordable housing dwelling unit program under this section  
94 shall adopt the following regulations and provisions to establish an affordable housing density bonus  
95 and development standards relief program:

96 1. Adopt procedures for processing an application authorized under this subdivision, which shall  
97 include a provision for a list of all documents and information required to be submitted with an  
98 application for a housing development. Procedures authorized by this subdivision shall require the  
99 zoning administrator or his designee to make an official determination in writing within 30 days of the  
100 application date as to each of the following, as applicable: (i) the amount of density bonus, calculated  
101 pursuant to subdivision 2, for which the applicant is eligible; (ii) if the applicant requests a parking  
102 ratio pursuant to subdivision 4, the parking ratio for which the applicant is eligible; and (iii) if the  
103 applicant requests waivers or reductions of development standards pursuant to subdivision 3, whether  
104 the applicant has provided adequate information for the locality to make a determination as to those  
105 waivers or reductions of development standards. An appeal by a party aggrieved of an official  
106 determination pursuant to this subdivision shall be made to the board of zoning appeals pursuant to  
107 § 15.2-2311.

108 2. The locality shall grant a density bonus, the amount of which shall be as specified in the  
109 corresponding table accompanying this subdivision, when an applicant voluntarily seeks and agrees to  
110 construct a housing development, excluding any units permitted by the density bonus awarded pursuant  
111 to this section, that will contain at least:

112 a. Ten percent of the total units of a housing development deemed affordable, as defined in this  
113 section, for low-income households; or

114 b. Five percent of the total units of a housing development deemed affordable, as defined in this  
115 section, for very-low-income households;

116 For housing developments meeting the criteria of subdivision a, the density bonus shall be calculated  
117 as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23

122	13	24.5
123	14	26
124	15	27.5
125	16	29
126	17	30.5
127	18	32
128	19	33.5
129	20	35
130	21	36.5
131	22	38
132	23	39.5
133	24	41
134	25	42.5
135	26	44
136	27	45.5
137	28	47
138	29	48.5
139	30	50
140	31	51.5
141	32	53
142	33	54.5
143	34	56
144	35	57.5

For housing developments meeting the criteria of subdivision b, the density bonus shall be calculated as follows:

	Percentage Very-Low-Income Units	Percentage Density Bonus
147	5	20
148	6	22.5
149	7	25
150	8	27.5
151	9	30
152	10	32.5
153	11	35
154	12	37.5
155	13	40
156	14	42.5
157	15	45
158	16	47.5
159	17	50
160	18	52.5
161	19	55
162	20	57.5
163	21	60
164	22	62.5
165	23	65
166	24	67.5
167	25	70
168	26	72.5
169	27	75
170	28	77.5
171	29	80
172	30	82.5
173	31	85
174	32	87.5
175	33	90
176	34	92.5
177	35	95

For housing developments meeting the criteria of subdivision a or b, an applicant shall be awarded an increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the locality, or, if elected by the applicant, a lesser percentage of density increase, including but not limited to no increase in density.

3. An applicant for a density bonus pursuant to subdivision 2 a or b may request a waiver or reduction of local development standards that (i) physically preclude the construction of a project at the density permitted by this section or (ii) impact the financial feasibility of a project submitted pursuant to this section. The locality shall grant the waiver or reduction of local development standards requested by the applicant unless the locality is able to make a written determination that such waiver or

188 reduction would have a specific, adverse impact upon health, safety, or the physical environment. The  
189 locality may also recommend to the applicant modifications of the initial request for waiver or reduction  
190 of local development standards that would satisfy the locality's concerns. Nothing in this subsection  
191 shall be interpreted to require a locality to waive or reduce development standards that would have an  
192 adverse impact on any real property that is listed in the Virginia Landmarks Register or National  
193 Register of Historic Places or would be contrary to state or federal law.

194 4. An applicant for a density bonus pursuant to subdivision 2 a or b may request a waiver or  
195 reduction in any local parking ratios or requirements. The locality shall grant the waiver or reduction  
196 unless the locality is able to make a written determination that such waiver or reduction would have a  
197 specific, adverse impact upon health, safety, or the physical environment of residents of the locality. The  
198 locality may also recommend to the applicant modifications of the initial request for waiver or reduction  
199 of local development standards that would satisfy the locality's concerns. This subdivision does not  
200 preclude a locality from reducing or eliminating a parking requirement for development projects of any  
201 type in any location.

202 F. A locality establishing an affordable housing dwelling unit program in any ordinance shall  
203 establish in its general ordinances, adopted in accordance with the requirements of subsection B of  
204 § 15.2-1427, reasonable regulations and provisions as to the following:

205 The sales and rental price for affordable dwelling units within a development shall be established  
206 such that the owner or applicant, or both, shall not suffer economic loss as a result of providing the  
207 required affordable dwelling units. For purposes of this subsection, "economic loss" for sales units  
208 means that result when the owner or applicant of a development fails to recoup the cost of construction  
209 and certain allowances as may be determined by the designee of the governing body for the affordable  
210 dwelling units, exclusive of the cost of land acquisition and cost voluntarily incurred but not authorized  
211 by the ordinance, upon the sale of an affordable dwelling unit.

212 G. Any locality establishing an affordable housing dwelling unit program pursuant this section shall  
213 not condition the submission, review, or approval of any application for a housing development on the  
214 basis of an applicant's decision to incorporate units deemed affordable for low-income or  
215 very-low-income households.

216 H. Notwithstanding any other provisions of this chapter, as used in this section, unless the context  
217 requires a different meaning:

218 "Affordable" means, as a guideline, housing that is affordable to households with incomes at or  
219 below the area median income, provided that the occupant pays no more than 30 percent of his gross  
220 income for gross housing costs, including utilities.

221 "Density bonus" means a density increase over the otherwise maximum allowable gross residential  
222 density as of the date of application by the applicant to the locality, or, if elected by the applicant, a  
223 lesser percentage of density increase, including but not limited to no increase in density.

224 "Development standard" includes any local land use, site, or construction regulation, including but  
225 not limited to height restrictions, setback requirements, side yard requirements, minimum area  
226 requirements, minimum lot size requirements, floor area ratios, or onsite open-space requirements that  
227 applies to a residential or mixed-use development pursuant to any local ordinance, policy, resolution, or  
228 regulation.

229 "Housing development" means a specific work or improvement within the Commonwealth, whether  
230 multifamily residential housing or single-family residential housing undertaken primarily to provide  
231 dwelling accommodations, including the acquisition, construction, rehabilitation, preservation, or  
232 improvement of land, buildings, and improvements thereto, for residential housing, and such other  
233 nonhousing facilities as may be incidental, related, or appurtenant thereto.

234 "Low-income household" means any individual or family whose incomes do not exceed 80 percent of  
235 the area median income for the locality in which the housing development is being proposed.

236 "Maximum allowable residential density" means the density allowed under the zoning ordinance and  
237 land use element of the comprehensive plan, or, if a range of density is permitted, means the maximum  
238 allowable density for the specific zoning range and land use element of the general plan applicable to  
239 the project. If the density allowed under the zoning ordinance is inconsistent with the density allowed  
240 under the land use element of the general plan, the general plan density shall prevail.

241 "Very-low-income household" means any individual or family whose incomes do not exceed 50  
242 percent of the area median income for the locality in which the housing development is being proposed.