

# Affordable Dwelling Unit Ordinance Research & Analysis



Prince William County  
Comprehensive Plan Update  
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# Affordable Dwelling Unit Ordinance Research & Analysis

## Introduction

As part of Prince William County's Comprehensive Plan update process, the County Board of Supervisors adopted a resolution<sup>1</sup> to initiate amendments to the Zoning Ordinance to create an Affordable Dwelling Unit Ordinance (ADU). In support of that initiative, EPR, PC was asked to conduct research and analysis of sample Affordable Dwelling Unit Ordinances adopted by Virginia localities for the purpose of learning lessons and best practices that could be applied to the development of an Affordable Dwelling Unit Ordinance for Prince William County. This paper summarizes the research that was conducted and concludes with options for consideration in the development of a draft ordinance for the County.

## State Enabling Legislation

### Background

Virginia localities' affordable dwelling unit ordinances are shaped by the state enabling legislation found in sections 15.2-2304 15.2-2305 and 15.2-2305.1 of the State Code. The Code of Virginia allows localities to adopt as part of local zoning ordinances through the provisions of Virginia Code §15.2-2304 and Virginia Code §15.2-2305, adopted respectively in 1989 and 1990 and subsequently amended most recently through §15.2-2305.1 in 2020. In general, §15.2-2304 allowed affordable dwelling unit ordinances to be applied to all development but only for seven specific localities (not including Prince William County), while §15.2-2305 expanded this to all localities but only for rezonings or special exceptions. And §15.2-2305.1 further expanded this for all localities by allowing an affordable housing ordinance to apply during a rezoning, special exception, site plan review, or subdivision plat.

### Section §15.2-2304 (This code is not applicable to Prince William County)

Virginia Code §15.2-2304 applies to seven specific localities: Albemarle County, Arlington County (County Manager Plan of government), Fairfax County (Urban County Executive form of government), Loudoun County and the cities of Alexandria, Charlottesville and Fairfax. These localities may require construction of on-site affordable units (or a fee in lieu of construction) as part of any new development at the time of rezoning, special permit, subdivision or site plan, provided the locality offers "optional increases in density in order to reduce land costs for such moderately priced housing." These jurisdictions have great discretion over ADU zoning ordinance provisions and are not subject to specific guidelines regarding the level of density bonus, the proportion or number of units that must be set aside as affordable, income parameters or how long a unit must be subject to affordability requirements.

### Section §15.2-2305 (This code is applicable to Prince William County)

All other localities in the Commonwealth of Virginia, including Prince William County, must adopt affordable dwelling unit programs through zoning regulations that are governed by Virginia Code § 15.2-2305 or § 15.2-2305.1. Under the provisions of Virginia Code § 15.2-2305, ADU provisions could be applied to applicant-initiated rezonings or special permit requests that seek bonus densities in exchange for providing ADUs or to subdivision or site plan applications with an equivalent density of greater than one unit per acre in an "approved sewer area." This could mean, for example, that a zoning district meeting these conditions could have a provision that allows additional density in exchange for the provision of affordable dwelling units that would be applied at the subdivision or site plan stage rather than rezoning. In other words, a developer could voluntarily exercise the option to provide the affordable units in exchange

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<sup>1</sup> Res. No. 21-424, adopted July 13, 2021 by the Prince William County Board of Supervisors

for the additional density in that district. However, the locality cannot require a developer to exercise the option unless it is a §15.2-2304 locality.

Localities subject to Virginia Code § 15.2-2305 are limited to specific caps for allowable bonus densities (up to 30%), must set aside a specific number of affordable units (up to 17% of bonus units or an equivalent ratio) and must adhere to restrictions about how long the units must be maintained as affordable (15-50 years); these localities may also accept cash or fees in lieu of on-site affordable dwelling units. Virginia Code § 15.2-2305 also establishes administrative procedures and regulations to provide oversight of affordable units by appropriate bodies or boards, to establish a local housing fund, set appropriate rental rates and sale prices, establish qualifying income guidelines and offer additional incentives such as fee waivers, to encourage the provision of affordable housing. Note that there are no income thresholds required in this code and the establishment of income eligibility thresholds is left to the local housing authority or local governing body. Some localities that are subject to § 15.2-2304 also include similar administrative procedures in their ordinances although they have greater latitude as to how their ADU ordinance is implemented.

### **Section §15.2-2305.1** (This code is applicable to Prince William County)

According to some industry sources, there was broad consensus among the residential development community and local governments that the provisions of § 15.2-2305 were fairly complex, burdensome, and challenging to implement.<sup>2</sup> This led to the adoption, in the 2020 legislative session for Virginia of 15.2-2305.1 to further expand the powers to provide affordable housing provisions for localities.

Code of Virginia 15.2-2305.1 is an update to Code of Virginia 15.2-2305. The affordable housing program under this legislation expands eligibility for an affordable housing ordinance to apply during a rezoning, special exception, site plan review, or subdivision plat to request a density bonus in exchange for providing affordable units. Under the legislation, density bonuses for low-income households (defined as 80% of the area median income) range from 20% density bonus for 10% of a development's units provided as affordable to a 57.5% density bonus for 35% of the units classified as affordable. For very low income households (defined as 50% of the area median income) range from 20% density bonus for 5% of a development's units provided as affordable to a 95% density bonus for 35% of the units classified as affordable.

This provision was modified from the previous 15.2-2305 legislation that set a fixed ratio of 30% density bonus to 17% affordable units, regardless of affordability income threshold. The new law also allows participating jurisdictions to enact enabling ordinances for the waiver of associated fees for new construction, renovation, or rehabilitation of affordable housing structures, to regulate and administer the sales and rental rates of affordable units and to allow the jurisdiction to lease a percentage of affordable rental units.

While the new 15.2-2305.1 legislation provides additional tools to address affordable housing, it does not allow the flexibility that the 15.2-2304 legislation gives to certain jurisdictions. It should be noted that Prince William County does not have an urban county executive form of government or the county manager plan of government, and therefore cannot use the §15.2-2304 legislation. It is limited to using only the §15.2-2305 or the §15.2-2305.1 legislation. As the §15.2-2305.1 legislation is so new, it has yet to be applied by any locality to the knowledge of the authors. It has several features, however, that should be investigated by locality attorneys as they can be of concern for a locality's authority in adopting this legislation, for example:

- Applicants may request a waiver or reduction of local development standards (including parking standards) that physically preclude the construction of a project at the density permitted or impact the financial feasibility of a project submitted pursuant to this section and the locality is required to grant the waiver unless the locality is able to make a written determination that such waiver or reduction would have a specific, adverse impact upon health, safety, or the physical environment.
- The locality shall not condition the approval of any application for a housing development on the basis of an applicant's decision to incorporate units deemed affordable for low-income households (defined as 80% of the area median income) or very-low-income households (defined as 50% of the area median income).
- Density bonuses are by formula and can go up to a 95% density bonus if 35% of the units provided are for very low income households (defined as 50% of the area median income).

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<sup>2</sup> "Back to Basics: Inclusionary Zoning" Housing Forward Virginia. [https://housingforwardva.org/news/fwd-b04-inclusionary-zoning-basics/#:~:text=Later%20legislation%20\(%C2%A7%2015.2%2D2305,of%2015%20to%2050%20years](https://housingforwardva.org/news/fwd-b04-inclusionary-zoning-basics/#:~:text=Later%20legislation%20(%C2%A7%2015.2%2D2305,of%2015%20to%2050%20years).

- Density bonuses are calculated based on the “Maximum allowable residential density” which is defined as the density allowed under either the zoning ordinance or the comprehensive plan. If these are in conflict, the comprehensive plan density shall prevail.
- Provisions require the zoning administrator to make an official determination in writing within 30 days of the application date as to: (i) the amount of density bonus for which the applicant is eligible; (ii) the parking ratio for which the applicant is eligible; and (iii) whether the applicant has provided adequate information for the locality to make a determination as to waivers or reductions of development standards.

The table below shows a summary of some of the main features differentiating the types of legislation under the State Code.

Table 1. Summary of State Code Provisions for Affordable Housing Ordinances<sup>3</sup>

	State Code § 15.2-2304	State Code § 15.2-2305	State Code § 15.2-2305.1
Covered localities	Counties of Albemarle, Arlington, Fairfax, and Loudoun; Cities of Alexandria, Fairfax, and Charlottesville	Authorizes affordable dwelling unit ordinances in <u>all</u> Virginia localities	All localities not covered under §15.2 2304
Set aside	Local discretion	Set-aside capped at 17%; density bonus capped at 30%; any reductions must maintain that ratio	10 percent of units affordable (as defined by locality) for low-income households <sup>4</sup> or 5 percent of units affordable (as defined by locality) for very low-income households <sup>5</sup>
Affordability level	Local discretion	Local discretion as long as owner does not suffer economic loss	80% of AMI (low income) or 50% of AMI (very low income) if density bonuses are used
Incentive	Local discretion	Local discretion as long as any density bonus complies with set aside ratio	Local discretion, but density bonuses must be calculated according to formula set in statute
Compliance options	Local discretion	May establish local housing fund	May establish local housing fund
Included developments	Local discretion	Local discretion	Local discretion
Affordability term	Local discretion	Between 15 and 50 years	Between 15 and 50 years
Program enforcement	Local discretion, including mandatory for any new development	May only apply when developer seeks rezoning or special exception or may apply to a site plan or subdivision plat	Voluntary

### Applications of the Legislation in Practice

Since 1989 and 1990, only a limited number of localities have adopted ADU ordinances under §15.2-2304 and §15.2-2305. Instead, most localities have implemented affordable housing policies by negotiating voluntary proffers, usually in exchange for additional densities provided for individual zoning districts or other special zoning ordinance provisions, in conjunction with a rezoning

<sup>3</sup> Adapted from “Affordable Housing in Virginia 2021, JLARC Report to the Governor and the General Assembly of Virginia” 2021

<sup>4</sup> Low-income household” means any individual or family whose incomes do not exceed 80 percent of the area median income for the locality

<sup>5</sup> Very-low-income household” means any individual or family whose incomes do not exceed 50 percent of the area median income for the locality

application. New legislation adopted by the General Assembly in 2016 unfortunately curtailed the widespread use of affordable housing proffers because localities were limited in their ability to negotiate proffers and prohibited from accepting proffers that are not “specifically attributable” to a need generated by proposed development. As a result, and to address a growing need for affordable housing, several Virginia localities are demonstrating renewed interest in ADU ordinances because these ordinances allow localities to obtain and secure affordable dwelling units through another mechanism.

Proffers in Virginia continue to have the “reasonableness test” that was applied to them in the 2019 legislation. However, localities may reduce or eliminate monetary proffers for rezonings that propose affordable housing as an incentive to favor those types of developments.

In 2020, Charlottesville successfully lobbied for and was granted an amendment to the Virginia Code to be included among jurisdictions subject to §15.2-2304 and, the City of Fairfax adopted its first ADU ordinance. Albemarle County and James City County are currently evaluating options for amending their zoning ordinances to include specific ADU ordinances to align with the provisions of §15.2-2304 and §15.2-2305, respectively.

## Key Considerations in the Development of an Affordable Dwelling Unit Ordinance

### Policy Considerations

A survey of the types of ADU ordinances that have been developed in Virginia reveals several key considerations in the implementation of affordable dwelling unit provisions. These considerations are the critical variables or “policy levers” that can be deployed in the construction of this type of ordinance. Decisions on these policy levers could affect the relative impact, ease of use, and market penetration of any affordable dwelling unit ordinance.

1. **Applicability** - The residential developments that will be subject to the inclusionary zoning policy, for instance, all multifamily and single-family developments with ten units or more
2. **Incentives** - The type and amount of incentives offered to offset the expense of providing affordable dwelling units, such as a tax rebate or density bonus
3. **Affordability Share** - The target share of the total units that must be affordable, such as 20% of all units must be affordable
4. **Income Level** - The threshold income level to set the price for affordable homes, such as 60% of Area Median Income
5. **Affordability Term** - The length of time that units must remain affordable
6. **Alternatives** - The potential for developers to make a cash payment in lieu of providing affordable housing

## Survey of Peer Communities

### Background

As part of the research, EPR, PC reviewed the affordable dwelling unit ordinances for all seven of the localities that qualify under the §15.2-2304 legislation. These localities were studied in greater detail because they also represent the most sophisticated models of an affordable housing ordinance. Three localities which fall under the §15.2-2305 legislation were also reviewed. However, as has been noted, there is less variability among these communities since the legislation is more prescriptive. Also, it should be noted that to date, many localities have implemented affordable housing provisions not through the development of a separate ADU ordinance, but by negotiating voluntary proffers in conjunction with a rezoning application. To our knowledge, no localities have adopted ordinances using the §15.2-2305.1 legislation.

### Comparison Chart

The chart shown in Appendix A. shows a general summary of the research conducted, showing the provisions that each locality uses. The following categories of information were collected for each locality:

- Minimum Project Size/Density Threshold
- Target AMI
- Threshold/Term

- Percent of Units Required to be Affordable
- Incentives
- Amount of Density Bonus
- Other Programs

It should be noted that each locality has its own customized provisions and the chart only provides a general summary of the provisions under each category. However, extensive footnotes are included to describe some of the nuances of ordinance provisions of each locality.

## Summary Findings

The research on peer community practices revealed a wide diversity of provisions for implementing affordable dwelling unit provisions through zoning and does not show a single unified approach. The following section summarizes this diversity of approaches along with some general conclusions. They are organized around the policy considerations or policy levers described above. The localities subject to the §15.2-2305 tend to have more similarity in their ADU ordinances since the enabling legislation gives them less leeway.

## Applicability

Applicability relates to the categories of development that are subject to the affordable dwelling unit provisions.

All the localities reviewed had certain thresholds for the applicability of the affordable dwelling unit provisions. In general, these were based on the size of the development, on the density of development, or both. In addition, several localities had exemptions from these general threshold provisions. For example, Loudoun County, in certain zoning districts, has exemptions from the requirement to provide affordable dwelling units. The provisions only applied to developments with an FAR of 1.0 in Arlington County and the City of Charlottesville. The City of Alexandria has the smallest threshold for size of development, at 1 unit or above, based on their unique situation as a built out urban community.

## Incentives

Incentives relates to the type and amount of incentives offered to offset lost rental income, such as a density bonus.

Almost all the localities reviewed used density bonuses as the primary incentive for the provision of affordable housing. In general, the amount of density bonus varies and has considerable complexity in the way it is applied to different zoning districts so that it is impossible to summarize this adequately in the chart or to derive a standard density bonus approach. For the § 15.2-2304 localities, there is no mandated requirement for minimum or maximum density bonuses. However, the State Code limits the density bonus for §15.2-2305 localities to no more than 30%. Under § 15.2-2305.1, density bonuses are set by a formula.

As mentioned above, localities may also reduce or eliminate monetary proffers for rezonings that propose affordable housing as an incentive to favor those types of developments.

In addition, other incentives besides density bonuses were used by some localities. For example, Arlington County also uses height bonuses, parking reductions and other financial incentives, and the city of Charlottesville uses reduced water and sewer fees as incentives. In Prince William County, PWCSA controls water and sewer fees, they are not set by the County, therefore this may not be an option in the County unless some type of grants or loans were offered for water and sewer fees.

## Affordability Share

Affordability Share relates to the target share of the total units that must be affordable in the zoning requirements.

For the § 15.2-2305 localities, State Code requires that 17% of the total units including bonus units or an equivalent ratio must be affordable if these provisions are exercised. For the § 15.2-2304 localities, there are no minimum or maximum requirements for the percent of affordable units in a development. Notwithstanding this, most of the § 15.2-2304 localities have certain minimum or maximum requirements for the percentage of affordable units. For example, Fairfax County set the threshold at 6.25% to 12.25% of the units which are required to be affordable, depending on the zoning provisions of the district. Arlington county and the city of

Charlottesville, by contrast, set the threshold as a certain percentage of the gross floor area of the development above an FAR of 1.0 that must be affordable. The use of FAR is more prevalent in urban communities or where mixed-use development is more prevalent.

## Income level

Affordability level relates to the threshold income level to set the price for affordable homes, such as 60% of Area Median Income.

Neither the § 15.2-2304 localities nor the § 15.2-2305-localities have any limitations by State Code on this threshold. However, for localities applying the § 15.2-2305.1 legislation the qualifying income levels are strictly defined as noted above. Furthermore, this legislation defines affordable housing as “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.” (Virginia Code 15.2-2201).

There is considerable variability in the application of this standard in the locality survey (note of course that no localities have yet applied the § 15.2-2305.1 legislation). The threshold of affordability ranged from 30% to 80% of the area median income. It also varied between units for rent and units for sale, generally with units for rent requiring a lower threshold of AMI. Although target AMI thresholds are established in some zoning ordinances, several localities refer to other documents such as the housing component of their Comprehensive Plan to establish AMI thresholds. Additionally, these thresholds may be established by a local ADU board. The establishment of a Housing Authority or other governing authority is required for the administration of ADUs under § 15.2-2305.

Under § 15.2-2305.1, however, income levels are set based on a formula tied to density bonuses permitted. There are two categories of affordability, and they are clearly defined under the definitions. Low-income household means “any individual or family whose incomes do not exceed 80 percent of the area median income for the locality.” Very-low-income household means “any individual or family whose incomes do not exceed 50 percent of the area median income for the locality.”

## Affordability Term

Affordability Term relates to the length of time that units must remain affordable. This component is critical for a jurisdiction’s ability to consistently maintain a level of affordable units and avoid them converting to market rate units after they are built.

The State Code allows a wide range for this provision. For § 15.2-2305 and the § 15.2-2305.1 localities, the length of time that the units must remain affordable can be between 15 and 50 years. For the § 15.2-2304 localities, there are no restrictions on this. There is wide variability in the peer communities on the affordability term.

## Alternatives

Alternatives relates to the potential for developers to make a cash payment in lieu of providing affordable housing.

Under State Code, both the § 15.2-2304 localities and the § 15.2-2305 localities may offer the option for developers to pay a fee in lieu of the provision of onsite affordable units. In general, all the § 15.2-2304 localities that require affordable dwelling units in their ordinances also allow the payment of a fee in lieu of the construction of those units. In the case of Loudoun County, recent experience has shown that the option for fee in lieu of payment has been very important since the availability of land for providing required affordable units has been severely restricted due to the lack of vacant land in applicable zoning districts. This is also a provision allowed under the § 15.2-2305.1 legislation, which, also allows a “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.”

## Potential Options for Prince William County.

The research conducted on peer localities yields some overarching considerations of options that are applicable to Prince William County in the consideration of developing a new affordable dwelling unit ordinance.

It is important to understand the limitations imposed by State Code. Prince William County is currently one of the §15.2-2305 or §15.2-2305.1 localities and therefore has a considerable number of limitations and requirements that would apply in the development of an affordable dwelling unit ordinance. These requirements are enumerated above and, although they do not preclude the County's ability to develop such an ordinance, they certainly do not allow the kinds of flexibility that are allowed to the § 15.2-2304 localities. The primary difference is that Prince William County would not be allowed to require mandatory provision of affordable dwelling units

but would have to do it through a voluntary process such as a rezoning, or a special use permit, or through a voluntary density bonus applied “by right” within a zoning district at time of subdivision or site plan.<sup>6</sup>

Unless the General Assembly changes the State Code to allow Prince William County to qualify as a § 15.2-2304 locality, any ordinance must abide by the requirements of § 15.2-2305 or §15.2-2305.1. Therefore, the following conclusions assume that Prince William needs to conform to the § 15.2-2305 or §15.2-2305.1 State Code provisions. The conclusions are organized according to the policy levers described above.

## State Code Provision

First and foremost, Prince William County needs to decide whether to apply the provisions of § 15.2-2305 or §15.2-2305.1. As noted above, § 15.2-2305 has more flexibility with respect to the set aside requirements and density bonuses although they are required to have a set ratio with respect to each other and have a 30% maximum density bonus. The § 15.2-2305.1 legislation has a set formula and only two options for qualifying income levels (low income and very low income). To qualify for any density bonus at all under § 15.2-2305.1, a project must set aside at least 10% of units for low income (<80% AMI) households, or at least 5% for very low income (<50% AMI) households. The included definitions of “low income” and “very low income,” the elimination of the 30% maximum, and the greater weight of very low income units makes the §15.2-2305.1 legislation more aggressive in incentivizing affordable housing but also comes with some more requirements for the locality and much greater density bonus potentials as noted in the State Enabling Legislation discussion above.

## Applicability

In order to qualify for the § 15.2-2305 or § 15.2-2305.1 provisions under State Code, the County must apply the affordable dwelling unit provisions only in areas with a density greater than 1 du/per 40,000 square feet served by public sewer and water as a minimum. Also, if choosing the § 15.2-2305 option, the county will want to establish a definition of affordable dwelling units and income thresholds. Beyond that, the County may want to consider a minimum project size threshold for applicability. Based on the peer community research, possible threshold options that the County may want to consider include:

- Projects of 50 units or more
- Projects of 20 units or more
- Above 1.0 FAR for mixed use projects

## Incentives

By State Code, the County must offer “optional increases in density in order to reduce land costs for such moderately priced housing.” In addition, the Code requires specific formula for density bonuses. Most localities used simple density bonuses as incentives.

Some localities have offered additional incentives beside density bonuses. Based on the peer community research, possible additional incentive options that the County may want to consider include:

- Waiving or reducing water and sewer fees (not feasible in Prince William County except in the form of grants or loans as discussed above)
- Expedited processing
- Waivers of monetary proffers

The County should decide whether any additional incentives should be offered in addition to the density bonuses mandated in the legislation.

## Affordability Share

Under § 15.2-2305, State Code requires that up to 17% of the bonus units (the units permitted as bonus density units) can be developed to achieve up to a 30% density bonus. In the event a 30% density increase is not achieved, the percentage of affordable

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<sup>6</sup> as noted above, this latter provision would only apply to areas with the provision of sewer and with densities above 1.0 dwelling units per acre

dwelling units required shall maintain the same ratio of 30 percent to 17 percent. Therefore, if the County exercises the provisions of this legislation, it may want to consider the following options for the share of affordable units required:

- A requirement for 17% of total units to be affordable if the density bonus of 30% is used.
- A sliding scale up to 17% of total units to be affordable if there are variable density bonuses (keeping the 17/30 ratio consistent in the sliding scale)

Under § 15.2-2305.1, the set asides of affordable units are tied by a formula to the density bonuses.

## Income level

Based on the peer community research, the threshold of income ranged from 30% to 100% of the Area Median Income. If the county exercises the provisions of Under § 15.2-2305, it can set the income threshold for eligibility. The consideration for affordability threshold for income is an important one and should be related to the prior research that the County has done on the availability of affordable units in the County for different income groups and housing types. It should be noted that AMI thresholds may differ for rental and purchase units. Under § 15.2-2305, the County may want to consider income thresholds such as the following (or any other thresholds between these options):

- 30% of the Area Median Income
- 50% of the Area Median Income
- 80% of the Area Median Income

However, for localities applying the § 15.2-2305.1 legislation, there is not an option to establish qualifying income levels by the locality and the qualifying income levels are strictly defined as noted above.

## Affordability Term

For § 15.2-2305 localities, State Code says that the length of time that the units must remain affordable can be between 15 and 50 years. It should be noted that most localities are going to longer terms for this provision. Based on the peer community research, there is wide variability in the affordability terms required. Possible term options that the County may want to consider include:

- 15 years
- 20 years
- 50 years
- Income thresholds established by an ADU Board annually

## Alternatives

Based on the peer community research, most localities offer the option for developers to pay a fee in lieu of the provision of onsite affordable units. This will require the establishment of some type of affordable housing fund, typically administered by a separate board. The options that the county may want to consider as alternatives to providing the required number of affordable dwelling units include:

- A cash payment for fee in lieu of providing affordable housing
- The dedication of land for affordable dwelling units

## Potential Next Steps

The research conducted on peer communities above shows considerable variability in the way that the State Code provisions have been applied to local zoning provisions for affordable housing. In summary, there is not one typical affordable dwelling unit ordinance or a “boilerplate” or model ordinance that can be followed for Virginia. Based on the County Board's direction to develop a draft affordable dwelling unit ordinance for Prince William County, the next logical step would be for county staff and leadership to review the research contained in this paper and assess the options for the policy levers described above. Based on their guidance for the preferred options under each policy lever, the consultants can begin to develop an outline affordable dwelling unit ordinance for review. Since there are many decision points in the development of such an ordinance, it is recommended that this Outline Ordinance be developed first and

reviewed before a full draft ordinance is written using formal zoning code language. The Outline Ordinance can be drafted as soon as policy direction has been given to the consultants on the policy options outlined in this paper.

# APPENDIX A. Chart of Peer Community Research

Table 2. Assessment of Localities subject to § 15.2-2304

Assessment of Select Affordable Dwelling Unit Provisions in Virginia						
SECTION § 15.2-2304 Localities <sup>i</sup> - ADUs are required and triggered by site plan, subdivision plat, rezoning and/or special permit when an ADU program ordinance has been adopted						
<i>(Note: The * indicates a locality has not adopted a full ADU program ordinance but does offer some zoning provisions addressing affordable dwelling units)</i>	Minimum Project Size/Density Threshold <sup>ii</sup>	Target AMI <sup>iii</sup> Threshold/Term <sup>iv</sup>	Percent of Units Required to be Affordable (Set Aside)	Incentives	Amount of Density Bonus	Other Programs/Notes
Albemarle County* (Chapter 18 - Sections 13.4.3, 14.4.3, 15.4.3, 16.4.3, 17.4.3, 18.4.3 and 20.C-12)	Above 5 units in Form Based Code Overlay Area; unspecified in conventional residential districts	Rental: up to 60% Sale: up to 80% 10 years to 30 years	At least 50% of bonus units	Optional Density Bonus at subdivision and site plan for conventional residential districts; Building Height Increases in Form Based Code Overlay if more than required units provided	Up to 30%	Applies to manufactured homes also: County is planning to adopt a more extensive ADU ordinance
City of Alexandria* (Section 7-700)	Any building with one or more dwelling units.	Rental: up to 40% in special districts; 60% otherwise. Sale: up to 100% 15-40 years	At least 1/3 of additional units achieved through density bonus	Contribution to trust fund permitted in lieu of units of based on per sq. ft per formula	Up to 30% and or a height bonus of up to 25 feet <sup>v</sup> ; an additional 30% may be granted in certain small plan areas and up to 3.0 FAR in special overlay district	Sliding scale for parking reductions for Multifamily buildings with ADU – amount of reduction varies with AMI and distance to transit
Arlington County (§ Sec. 15.5.8)	Above 1.0 F.A.R for residential and mixed use projects	60% 30 years	5% to 10% of G.F.A. above 1.0 F.A.R varies by location of where units to be built <sup>vi</sup>	Bonus density at time of site plan approval varies based on where units are built, or Contribution to trust fund permitted in lieu of units of based on per sq. ft per formula and F.A.R; streamlined approval process	Varies - determined at time of site plan review <sup>vii</sup>	Building Height Bonus, Parking Reduction, Special TDR Provisions for revitalization and special plan areas, affordable housing protection areas
Fairfax County (Art. 5- Sec. 5101)	50 units - at least 1 du/acre density <sup>viii</sup> in approved sewer service area	70% for sale units 50% for one-third of rental units; 70% for remaining two-thirds of rental units 20-50 years	6.25% or 12.5% of total units <sup>ix</sup>	Density bonus, higher bonus for parking reduction	10-20% <sup>x</sup>	Cash in lieu of construction, dedication of land for affordable dwellings permitted as an alternative; extensive guidelines for administration and calculations for ADU provisions

## Assessment of Select Affordable Dwelling Unit Provisions in Virginia

**SECTION § 15.2-2304 Localities<sup>i</sup> - ADUs are required and triggered by site plan, subdivision plat, rezoning and/or special permit when an ADU program ordinance has been adopted**

(Note: The * indicates a locality has not adopted a full ADU program ordinance but does offer some zoning provisions addressing affordable dwelling units)	Minimum Project Size/Density Threshold <sup>ii</sup>	Target AMI <sup>iii</sup> Threshold/Term <sup>iv</sup>	Percent of Units Required to be Affordable (Set Aside)	Incentives	Amount of Density Bonus	Other Programs/Notes
Loudoun County (Art. 7)	50 units or more at a density greater than 1 du/per 40,000 square feet served by public sewer and water <sup>xi</sup>	Sale: 30-70%  Rental: 30-50%  20-30 years	6.25% or 12.5% of total units <sup>xii</sup>	Density Bonus	10-20% <sup>xiii</sup>	Cash in lieu of required ADUs permitted special provisions for mixed-use districts
City of Fairfax (Art. 3.9)	30 units or more required; voluntary under 30 units	Sale: up to 70%  Rental: up to 60%  30 years	6-10% of total units <sup>xiv</sup>	Density Bonus, Building height increase	10-20%	Priority given to residents or employees of the City; City has right to purchase ADUs
City of Charlottesville* (Sec. 34-12)	Above 1.0 F.A.R (or equivalent d.u. per acre) and above for mixed use or residential projects requiring a rezoning or special use permit	Sale or Rent: 80%  30 years	5% of G.F.A. above 1.0 F.A.R. on or off-site	Reduced water and sewer fees; expedited processing	Varies by zoning district	Cash contribution in lieu of ADU units; a city housing fund, the City is developing revised affordable housing zoning provisions

Table 3. Assessment of Localities subject to § 15.2-2305

Assessment of Select Affordable Dwelling Unit Provisions in Virginia						
SECTION § 15.2-2305 Select Localities – ADU provisions triggered only by rezoning or special use permit, at discretion of locality for subdivision and site plan						
	Minimum Project Size/Density Threshold <sup>xv</sup>	Target AMI <sup>xvi</sup> Threshold/Term <sup>xvii</sup>	Percent of Units Required to be Affordable (Set Aside)	Incentives	Amount of Density Bonus	Other Programs/Notes
City of Virginia Beach (Article 21)	None but not permitted in areas restricted due to airport noise and crash zones or R-10 - R-40 districts	40-90%  40-100% for multifamily with elevator	At least 17% of total units	Bonus Density	Up to 30%	Implemented through a Work Force Overlay Zoning District consistent with the Comprehensive Plan
City of Falls Church (Article XII)	Any residential or mixed use project located in certain zoning districts	Sale: 50-80%  Rent: up to 60%	Sliding scale up to 12.5% of total units	Optional Bonus Density, Sliding scale Fee Deferral for on site units	Sliding Scale up to 20% for development in specific zoning district	Prioritizes units for seniors and disabled who live in the city; Cash contribution in lieu of construction permitted
City of Suffolk (Sec. 31-417)	50 units - at least 1 du/acre density in approved sewer service area	Income Thresholds established by ADU Board annually  15 to 50 years	At least 17% of total units	Density Bonus, Expedited Permitting	Up to 30%	Income guidelines not included in ordinance, language fers

<sup>i</sup> Localities subject to Virginia Code § 15.2-2304 have great discretion to implement affordable housing incentives through zoning provisions so long as they provide for “optional increases in density in order to reduce land costs for such moderately priced housing.” These localities provide density bonus incentives for ADUs through site plan and subdivision as well through rezoning or special permit. Although localities subject to § 15.2-2304 are required to grant density bonuses for developments that include ADUs, the legislation does not include specific guidelines regarding the level of density bonus, income guidelines or how long a unit must be subject to affordability requirements. This legislative option currently only available seven localities: Albemarle County, Arlington County, Fairfax County, Loudoun County and the cities of Alexandria, Charlottesville and Fairfax.

<sup>ii</sup> The minimum number of units, project size and/or density subject to the ADU requirement

<sup>iii</sup> AMI is the Area Median Income calculated annually for a region by the U.S. Department of Housing & Urban Development. The 2021 AMI for Prince William County, which is part of the Washington MSA for calculation purposes, is \$126,000.

<sup>iv</sup> Term is the length of time the dwelling unit is subject to affordability restrictions.

<sup>v</sup> Bonus height cannot be applied in zones with a height limit of 50’ or lower.

<sup>vi</sup> These percentages apply to projects developed by-right through site plan approval that are not otherwise subject to special designation. The percentage required varies by where the units are to be constructed on-site or off-site.

<sup>vii</sup> Arlington County uses different density bonuses based on project location and project types. Density bonuses for projects located near metro stations and in revitalization areas vary based on specific language in the County’s zoning ordinance designed to align with Comprehensive Plan policies. For example, projects in the Columbia Pike district can get density bonuses for providing 20-35% affordable units, while projects in the Nauck Village Center area receive density benefits for providing 10% affordable units. Density bonuses for projects located near metro stations and in revitalization areas also vary based on specific language in the County’s zoning ordinance designed to align with Comprehensive Plan policies.

<sup>viii</sup> Certain zoning districts and conditions may exempt a project from the requirements

<sup>ix</sup> Set aside is up to 12.5 % of bonus units for single family residential developments. Multi-family developers may choose a 6.25% or 12.5% depending whether the optional density bonus is 10% or 20% respectively.

<sup>x</sup> Density bonuses vary based on density guidelines for residential areas in the Comprehensive Plan. Provisions for multi-family buildings vary based on whether the building has an elevator and/or structured parking.

<sup>xi</sup> Certain zoning districts and conditions may exempt a project from the requirements

<sup>xii</sup> Set aside is up to 12.5 % of units for single family residential developments. Multi-family developers may choose a 6.25% or 12.5% set aside depending on whether the optional density bonus is 10% or 20% respectively.

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<sup>xiii</sup> Depending on the percent of ADUs proposed and the housing type.

<sup>xiv</sup> Set aside is up to 10 % of all units for single family residential developments and 6% for all mixed use and multi-family developments.

<sup>xv</sup> The minimum number of units, project size and/or density subject to the ADU requirement

<sup>xvi</sup> AMI is the Area Median Income calculated annually for a region by the U.S. Department of Housing & Urban Development. The 2021 AMI for Prince William County, which is part of the Washington MSA for calculation purposes, is \$126,000.

<sup>xvii</sup> Term is the length of time the dwelling unit is subject to affordability restrictions.

## APPENDIX B. Copies of State Legislation

### § 15.2-2304. Affordable dwelling unit ordinances in certain localities

In furtherance of the purpose of providing affordable shelter for all residents of the Commonwealth, the governing bodies of any county where the urban county executive form of government or the county manager plan of government is in effect, the Counties of Albemarle and Loudoun, and the City of Alexandria may by amendment to the zoning ordinances of such localities provide for an affordable housing dwelling unit program. The program shall address housing needs, promote a full range of housing choices, and encourage the construction and continued existence of moderately priced housing by providing for optional increases in density in order to reduce land costs for such moderately priced housing. Any project that is subject to an affordable housing dwelling unit program adopted pursuant to this section shall not be subject to an additional requirement outside of such program to contribute to a county or city housing fund.

Any local ordinance of any other locality providing optional increases in density for provision of low and moderate income housing adopted before December 31, 1988, shall continue in full force and effect.

### 15.2-2305 - Affordable dwelling unit ordinances.

A. In furtherance of the purpose of providing affordable shelter for all residents of the Commonwealth, 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, determined in accordance with the locality's definition of affordable housing, by providing for increases in density to the applicant in exchange for the applicant providing 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 dwelling unit qualifying income guidelines, and (iii) offer incentives other than density increases, such as reductions or waiver 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 dwelling unit ordinance.

B. Any zoning ordinance establishing an affordable housing dwelling unit program may include, among other things, reasonable regulations and provisions as to any or all of the following:

1. A definition of affordable housing and affordable dwelling units.

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2. 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 which is the subject of an application for rezoning or special exception or, at the discretion of the local governing body, site plan or subdivision plat which yields, as submitted by the applicant, at an equivalent density greater than one unit per acre and which is located within an approved sewer area.

3. For an increase of up to 30 percent in the developable density of each site subject to the ordinance and for a provision requiring up to 17 percent of the total units approved, including the optional density increase, to be affordable dwelling units, as defined in the ordinance. In the event a 30 percent increase is not achieved, the percentage of affordable dwelling units required shall maintain the same ratio of 30 percent to 17 percent.

4. For increases by up to 30 percent of the density or of the lower and upper end of the density range set forth in the comprehensive plan of such locality applicable to rezoning and special exception applications that request approval of single family detached dwelling units or single family attached dwelling units, when such applications are approved after the effective date of a local affordable housing zoning ordinance amendment.

5. For a requirement that not less than 17 percent of the total number of dwelling units approved pursuant to a zoning ordinance amendment enacted pursuant to subdivision B 4 of this section shall be affordable dwelling units, as defined by the local zoning ordinance unless reduced by the 30 to 17 percent ratio pursuant to subdivision B 3 of this section.

6. 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.

7. 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.

8. 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.

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

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

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

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

2. 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 ninety 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 ninety-day period to persons who meet the income criteria established by the local housing authority or local governing body or the latter's designee.

3. For a local housing authority or 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 local

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governing body or its designee, provided that the remaining for-rental affordable dwelling units within a development be offered to persons who meet the income criteria established by the local housing authority or local governing body or its designee.

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

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

6. For a requirement that the prices for resales and rentals be controlled by the local housing authority or local governing body or designee for a period of not less than 15 years nor more than 50 years after the initial sale or rental transaction for each affordable dwelling unit, provided that the ordinance further provide for reasonable rules and regulations to implement a price control provision.

7. For establishment of an affordable dwelling unit advisory board which shall, among other things, advise the jurisdiction on sales and rental prices of affordable dwelling units; advise the housing authority or local governing body or its designees on requests for modifications of the requirements of an affordable dwelling unit program; adopt regulations concerning its recommendations of sales and rental prices of affordable dwelling units; and adopt procedures concerning requests for modifications of an affordable housing dwelling unit program. Members of the board, to be ten in number and to be appointed by the governing body, shall be qualified as follows: two members shall be either civil engineers or architects, each of whom shall be registered or certified with the relevant agency of the Commonwealth, or planners, all of whom shall have extensive experience in practice in the locality; one member shall be a real estate salesperson or broker, licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1; one member shall be a representative of a lending institution which finances residential development in the locality; four members shall consist of a representative from a local housing authority or local governing body or its designee, a residential builder with extensive experience in producing single-family detached and attached dwelling units, a residential builder with extensive experience in producing multiple-family dwelling units, and a representative from either the public works or planning department of the locality; one member may be a representative of a nonprofit housing organization which provides services in the locality; and one citizen of the locality. At least four members of the advisory board shall be employed in the locality.

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

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

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

9. For the establishment of jurisdiction-wide affordable housing dwelling unit sales prices by the local housing authority or the local governing body or its designee, initially and adjusted semiannually, based on a determination of all ordinary, necessary, and reasonable costs required to construct the affordable dwelling unit prototype dwellings by private industry after considering written comment by the public, the local housing authority, or an advisory body to the local governing body, and other information such as the

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area's current general market and economic conditions, provided that sales prices do not include the cost of land, on-site sales commissions, and marketing expenses, but may include, among other costs, builder-paid permanent mortgage placement costs and buy-down fees and closing costs except prepaid expenses required at settlement.

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

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

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

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

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

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

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

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

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

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35
21	36.5
22	38
23	39.5
24	41
25	42.5
26	44
27	45.5
28	47
29	48.5
30	50
31	51.5
32	53
33	54.5
34	56
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
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35
12	37.5
13	40
14	42.5
15	45
16	47.5
17	50
18	52.5
19	55
20	57.5
21	60
22	62.5
23	65
24	67.5
25	70
26	72.5
27	75
28	77.5
29	80
30	82.5
31	85
32	87.5
33	90
34	92.5
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 reduction would have a specific, adverse impact upon health, safety, or the physical environment. The locality may also recommend to the applicant modifications of the initial request for waiver or reduction of local development standards that would satisfy the locality's concerns. Nothing in this subsection shall be interpreted to require a locality to waive or reduce development standards that would have an adverse impact on any real property that is listed in the Virginia Landmarks Register or National Register of Historic Places or would be contrary to state or federal law.

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

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

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

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

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

"Affordable" 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 30 percent of his gross income for gross housing costs, including utilities.

"Density bonus" means a density 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.

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

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

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

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

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

