



# MUNICIPAL PLANNING FOR AFFORDABLE HOUSING

What Connecticut Municipalities and Their Officials  
Need to Know

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# SPEAKERS

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- This presentation contains educational material that provides only a general overview. This presentation and associated materials do not constitute legal advice. Please contact us if you would like specific legal advice.



# The Origins

- Affordable housing initiatives in Connecticut and resulting laws truly came about in the 1980s.
- Around this time, there was an affordable housing crisis in Connecticut and state government recognized that there were many communities throughout the state where individuals and families could not afford to live and work.
- As a result, the legislature convened a Blue Ribbon Commission to study affordable housing issues throughout the state and to propose solutions to address the problem.
- This gave rise to the **Affordable Housing Land Use Appeals Act** (now codified in Conn. Gen. Stat. §8-30g) (the “Act”), which was passed by the Connecticut Legislature and became effective in 1990.

# The Act's Policy Underpinnings



- The Act basically encourages the development of affordable housing throughout Connecticut at the local municipal level.
- The Act was originally premised on encouraging suburban and rural municipalities to allow more affordable housing development and to spread such development outside of Connecticut's urban centers.
- Our Supreme Court has noted that the Act is a remedial statute that “must be liberally construed in favor of those whom the legislature intended to benefit.” Kaufman v. Zoning Com' n of City of Danbury, 232 Conn. 122, 140 (1995).
- Since its inception, the Act has been strengthened and modified to catalyze affordable housing development at the local government level.

# Affordable Housing Defined (8-30g)

“**Affordable housing development**” means a proposed housing development which is either: (A) assisted housing, or (B) a set-aside development

“Assisted housing” means housing which is receiving, or will receive, financial assistance under any governmental program for the construction or substantial rehabilitation of low and moderate income housing, and any housing occupied by persons receiving rental assistance under chapter 319uu or Section 1437f of Title 42 of the United States Code.

\*Commonly referred to as Subsidized Housing



# Affordable Housing Defined (8-30g)

“Set-aside development” means a development

30% of proposed dwellings must be deed or covenant restricted for at least forty years

To be sold or rented at, or below, prices which will preserve the units as affordable housing.

Occupant/buyer has an income level less than or equal to **eighty per cent of the median income.**

In addition, at least 15% of the affordable units shall be sold or rented to persons and families whose income is less than or equal to **sixty per cent of the median income.**

To be affordable, occupant/buyer must be able to expend no more than 30% of their annual income towards rent/mortgage.

# Affordable Housing Defined (8-30g)

**Example: 120 units proposed.**

36 units must be dedicated to affordable restrictions to be rented or sold to those with incomes at or below 80% of the median.

At least 18 units must be dedicated to affordable restrictions to be rented or sold to those with incomes at or below 60% of the median, the remaining to those at or below 80%.

All prices/rents must be set so that the qualifying owner/buyer will spend no more than 30% of their annual income on housing.



# Median Income

“Median income” means, after adjustments for family size, **the lesser of the state median income or the area median income for the area in which the municipality containing the affordable housing development is located**, as determined by the United States Department of Housing and Urban Development.

<https://www.huduser.gov/portal/datasets/il/il19/State-Incomelimits-Report-FY19r.pdf>

\*Connecticut 2021-22 (family of 4) \$125,087

[https://www.huduser.gov/portal/datasets/il/il2019/select\\_Geography.odn](https://www.huduser.gov/portal/datasets/il/il2019/select_Geography.odn)

\*Hartford Area 2022: \$112,700

# Workforce Housing vs. Subsidized Housing

Not all affordable housing is “subsidized.”

\*Those who provide services and goods to the community should be able to live and work in the communities they serve.



# Why Should Municipalities Care?

- **Public Policy Considerations**
  - Connecticut Lacks Affordable Housing
    - A 2019 report by the National Low Income Housing Coalition ranked CT as having the 9<sup>th</sup> most expensive **housing wage**\* in the country.
    - \$25.40/hr required to afford a 2-bedroom rental home
    - Must work 101 hours/wk at the minimum wage to afford 2 bedroom rental home
  - Do you want your community contributors to be able to live in your community?
    - Attracts business owners and entrepreneurs
    - Attracts a skilled workforce
- \***Housing Wage** is the hourly wage a full-time worker must earn to afford a modest rental home while spending no more than 30% of his or her income on rent and utilities.

# Why Should Municipalities Care? – Cont'd

## ○ **Statutory Mandates - Affordable Housing Act**

- Chapter 126a: Affordable Housing Land Use Appeals
- Your municipality is subject to it unless your municipality can establish that 10% of your housing units are affordable.
- According to the State Department of Housing, in 2018 only 29 municipalities qualified for this exemption.
- <https://portal.ct.gov/-/media/DOH/Final-Appeals-Summary-2018.pdf?la=en>

# Minimum Threshold: 10%

- If at least 10% of a municipality's dwelling units do not meet one or more of the following criteria (which comprise the definition of "affordable housing"), then the municipality's land use agencies are subject to the Act's application and appeals procedure:
  - Assisted housing;
  - Housing financed by CHFA mortgages;
  - Housing subject to binding deed restrictions or covenants which require that dwelling units must be sold or rented at or below prices which will allow persons and families to pay only up to 30% of their income where their income is less than or equal to 80% of the median income;
  - Mobile manufactured homes located in mobile manufactured home parks containing covenants or deed restrictions which require that the homes, at least for 10 years, shall be sold or rented at prices which will allow persons and families to pay only up to 30% of their income where their income is less than or equal to 80% of the median income; and/or
  - Mobile manufactured homes located in resident-owned mobile manufactured home parks.
- Once a year, the CT Department of Housing is required to post a listing of all municipalities in the state which meet this 10% threshold. These municipalities are deemed "exempt."

2021 Affordable Housing Appeals List - Non-Exempt Municipalities							
Town	2010 Census	2021 Gov Assisted	2021 Tenant Rental Assistance	2021 Single Family CHFA/USDA Mortgages	2021 Deed Restricted Units	2021 Total Assisted Units	2020 Percent Affordable
Andover	1,317	24	1	29	0	54	4.10%
Ashford	1,903	32	0	32	0	64	3.36%
Avon	7,389	244	21	36	1	302	4.09%
Barkhamsted	1,589	0	5	21	0	26	1.64%
Beacon Falls	2,509	0	4	38	0	42	1.67%
Berlin	8,140	556	50	124	4	734	9.02%
Bethany	2,044	0	2	11	0	13	0.64%
Bethel	7,310	192	30	132	87	441	6.03%
Bethlehem	1,575	24	0	5	0	29	1.84%
Bolton	2,015	0	2	29	0	31	1.54%
Bozrah	1,059	0	3	27	0	30	2.83%
Branford	13,972	243	73	152	9	477	3.41%
Bridgewater	881	0	0	1	0	1	0.11%
Brookfield	6,562	155	22	97	77	351	5.35%
Brooklyn	3,235	232	10	63	0	305	9.43%
Burlington	3,389	27	0	44	0	71	2.10%
Canaan	779	1	3	4	1	9	1.16%
Canterbury	2,043	76	1	61	0	138	6.75%
Canton	4,339	251	31	48	32	362	8.34%
Chaplin	988	0	2	35	0	37	3.74%
Cheshire	10,424	258	23	88	17	386	3.70%
Chester	1,923	23	4	15	0	42	2.18%
Clinton	6,065	105	8	60	0	173	2.85%
Colchester	6,182	364	37	132	4	537	8.69%
Colebrook	722	0	1	6	1	8	1.11%
Columbia	2,308	24	2	57	0	83	3.60%
Cornwall	1,007	28	2	6	0	36	3.57%
Coventry	5,099	103	4	120	20	247	4.84%
Cromwell	6,001	212	9	173	0	394	6.57%
Darien	7,074	161	14	2	104	281	3.97%
Deep River	2,096	26	6	32	0	64	3.05%
Durham	2,694	36	1	26	0	63	2.34%
East Granby	2,152	72	2	42	0	116	5.39%
East Haddam	4,508	73	2	59	0	134	2.97%
East Hampton	5,485	64	7	83	25	179	3.26%
East Haven	12,533	542	167	274	0	983	7.84%
East Lyme	8,458	396	19	86	19	520	6.15%
Eastford	793	0	0	10	0	10	1.26%
Easton	2,715	0	0	3	15	18	0.66%
Ellington	6,665	260	5	104	0	369	5.54%
Essex	3,261	75	2	16	16	109	3.34%
Fairfield	21,648	231	139	56	182	608	2.81%
Farmington	11,106	470	115	128	155	868	7.82%
Franklin	771	27	2	19	0	48	6.23%
Glastonbury	13,656	604	49	108	2	763	5.59%
Goshen	1,664	1	1	4	0	6	0.36%
Granby	4,360	85	2	46	5	138	3.17%
Greenwich	25,631	879	458	13	38	1,388	5.42%
Griswold	5,118	222	57	144	0	423	8.26%
Guilford	9,596	186	10	32	0	228	2.38%
Haddam	3,504	22	1	27	0	50	1.43%
Hamden	25,114	1,048	818	473	4	2,343	9.33%
Hampton	793	0	1	11	0	12	1.51%

## Why Should Municipalities Care? – Cont'd

- **Statutory Mandates - Affordable Housing Act**
- Affordable housing has been historically disfavored among residents.
- Fear it equates to subsidized “low income” housing, crime, drugs, and violence.

# Affordable Housing Land Use Appeals

- Allows a developer to make application and propose a development without regard for local zoning laws.
  - Any density
  - Any location (maybe not an industrial zone)
  - Depending upon regulations, possible zone change altogether with submission of concept plan.





# What Agencies Are Covered?

- As used in the Act, “Commission” means:
  - Zoning Commissions;
  - Planning Commissions;
  - Planning and Zoning Commissions;
  - Zoning Boards of Appeals; and
  - Other agencies “exercising zoning or planning authority”
- The following are excluded:
  - Water Pollution Control Authorities
  - Inland Wetlands and Watercourses Commissions



# What Applications Are Covered?

- “...any application made to a commission in connection with an affordable housing development....” Conn. Gen. Stat. §8-30g(a)(2).
  - Site Plan Applications
  - Zone Change Applications
  - Subdivision Applications
  - Special Permit Applications
  - Applications for Text Amendments
  - Variance Applications

# Application Requirements

- Any person filing an affordable housing application with a commission shall submit, as part of the application, an affordability plan which shall include at least the following: (A) Designation of the person, entity or agency that will be responsible for the duration of any affordability restrictions, for the administration of the affordability plan and its compliance with the income limits and sale price or rental restrictions of this chapter; (B) an affirmative fair housing marketing plan governing the sale or rental of all dwelling units; (C) a sample calculation of the maximum sales prices or rents of the intended affordable dwelling units; (D) a description of the projected sequence in which, within a set-aside development, the affordable dwelling units will be built and offered for occupancy and the general location of such units within the proposed development; and (E) draft zoning regulations, conditions of approvals, deeds, restrictive covenants or lease provisions that will govern the affordable dwelling units.

# Affordable Housing Land Use Appeals

## ○ Burden Shifting

- **If you deny or place conditions on an application that have a substantial adverse impact on the viability of the development,\* the burden shifts to the planning and zoning commission(s) to establish that :**
  1. “the decision is necessary to protect substantial public interests in health, safety or other matters which the commission may legally consider;
  2. such public interests clearly outweigh the need for affordable housing; and
  3. such public interests cannot be protected by reasonable changes to the affordable housing development ....”

\*Evidence required to support this assertion is not clear.

## ○ Burden Shifting

- “If the commission does not satisfy its burden of proof under this subsection, the court **shall** wholly or partly revise, modify, remand or reverse the decision from which the appeal was taken in a manner consistent with the evidence in the record before it.”

# Affordable Housing Land Use Appeals

## ○ Burden Shifting

- Bases to deny application and meet burden to overcome need for affordable housing has become extremely limited.
  - Significant health or safety issue
  - Failure to abide by Affordable Housing statutes
- May even impact developer's need to comply with local ordinances, such as road and driveway ordinances. See, e.g., Brenmor v. Lisbon, 320 Conn. 928 (2017)

# Affordable Housing Land Use Appeals

## .Modifications to Plan

Modifications/conditions to the plan within the jurisdiction of the commission are allowed.

If the developer refuses, the issue becomes whether the modifications/conditions will substantially and adversely impact the viability of the project.

Should decide whether further changes with less of an impact are doable.

In the end, the modifications and/or conditions must outweigh the need for affordable housing

# Affordable Housing Land Use Appeals

- Application for modification following denial/restrictive conditions
- Developer may, within 15 days of notice of the denial, submit a proposal to modify the development plan in accordance with some or all of the concerns raised by the commission.
- This tolls the appeal period.
- You have 65 days to render a decision



# Affordable Housing Land Use Appeals

- **What does it really mean?**
  - Potentially could disrupt the orderly development of your municipality. (Location, Public Facilities, Traffic, Etc.)
  - Developers have been known to use the affordable housing act as a sword.



# Moratoria

- The Act does not apply to a municipality where the Commissioner of Housing has published a certification of affordable housing project completion in the Connecticut Law Journal. This act commences a statutory moratorium on affordable housing development for 4 years within the municipality.
- Note that this moratorium can be obtained by municipalities that do not even meet the 10% minimum threshold but they must be demonstrating to the Commissioner that they are making adequate progress on affordable housing development.
- The procedure for obtaining the moratorium can be complex.

# Why Should Municipalities Care? – Cont'd

## ○ Other Statutory Mandates:

- In 2017, the Connecticut Legislature passed P.A. 17-170, which in relevant part requires each municipality, at least once every 5 years, to prepare or amend and adopt an **affordable housing plan** (*now codified in Conn. Gen. Stat. § 8-30j*). The plan must specify how the municipality will increase the number of affordable housing developments within its jurisdiction.

## Why Should Municipalities Care? – Cont'd

- In legislative session year 2018, Gov. Malloy pushed for legislation that was going to penalize numerous municipalities that did not have affordable housing.
- Gov. Malloy's bill was introduced, *H.B. 5045 (An Act Establishing Accountability for Fair and Affordable Housing Through Zoning Regulations)* (the "Bill"). It was going to make revisions to Conn. Gen. Stat. § 8-2, the statute which gives municipal planning and zoning authorities their authority to enact zoning regulations. The Bill proposed that;
  - Per Section 8-2 zoning regulations must "*affirmatively further fair housing.*"
  - Each municipality, at least once every 5 years, must demonstrate to the Commissioner of Housing that it was complying with all affordable housing-related provisions of Section 8-2.
  - Zoning regulations must provide for, rather than encourage, a variety of housing development opportunities to meet local and regional needs.
- Failure to comply would make municipalities ineligible for certain discretionary state funding.
- The Bill ultimately died in the Senate in April 2018.



# P.A. 21-29: The Highlights

- **Modifies the zoning enabling act (CGS§8-2) in various ways, including:**
  - Eliminating requirements that zoning regulations (i) be designed to prevent overcrowding (ii) be enacted with reasonable consideration of district’s “character”; and (iii) be enacted with reasonable consideration of conserving building values
  - Zoning regulations must: (i) provide for varied housing opportunities and (ii) affirmatively further purposes of federal Fair Housing Act
  - Zoning regulations must be designed to protect historic, tribal, cultural, and environmental resources
  - Regulations cannot: (i) prohibit cottage food operations in residential zones; (ii) place cap on number of dwellings in multifamily, middle, or mixed-use developments; or (iii) establish minimum floor area requirements for dwelling units
- **Makes Accessory Dwelling Units (ADUs) (“Accessory apartments”) permitted as of right, subject to opt-out provision**
- **Adds ZEO certification requirements**
- **Requires biennial training for local P&Z officials**
- **Establishes Commission on Connecticut’s Development and Future**
- **Clarifies requirements for municipal affordable housing plans**

# Why Planning For Affordable Housing is Important

- Connecticut needs Affordable Housing
- Affordable Housing Appeals Act trumps zoning
- Statutory Requirement to affirmatively plan for Affordable Housing
- Failure to comply could:
  - Disrupt the orderly development of your town
  - Deny residency to a skilled and diverse community and/or workforce
  - Impact economic development
  - Result in punitive sanctions.

# The Need for Affordable Housing - In Summary

- “Every town needs some diversity in its housing options. Housing needs vary greatly at different times in our lives. To retain diversity within our community, our town must provide the equivalent in its housing stock. Without this flexibility any change in family size, health or employment puts us in danger of losing the members of our community we should be valuing the most – our teachers, our health care providers, our employees and our volunteers.” Town of Salisbury Affordable Housing Plan, p. 8.
- Promotes Diversity
- Retains:
  - Young People
  - Seniors
  - Volunteers



# The Affordable Housing Plan

- Section 8-30j.
- Must “prepare or amend” at least once every 5 years.
- Must specify how the municipality intends to increase the number of affordable housing developments in the municipality.
- May hold public informational meetings. Proper notice and filing in clerk’s office required.
- Must “regularly review and maintain such plan.”
- Failure to adopt and/or timely amend requires that the chief elected official of the municipality submit a letter to the Commissioner of Housing that explains why.
- \*No actual sanctions for noncompliance **YET**



# Affordable Housing Plan Creation and Criteria

- Consider establishing an Affordable Housing Commission/ Committee to do the work
- Set goals and define your objectives:
  - Timeframe for researching, drafting, and adopting your Plan
  - Creation of an appropriate number of affordable units over a specified time period.
  - Types of units: multifamily, rental, etc.
  - Consider appropriate sites (sewer, water, transportation, etc.)



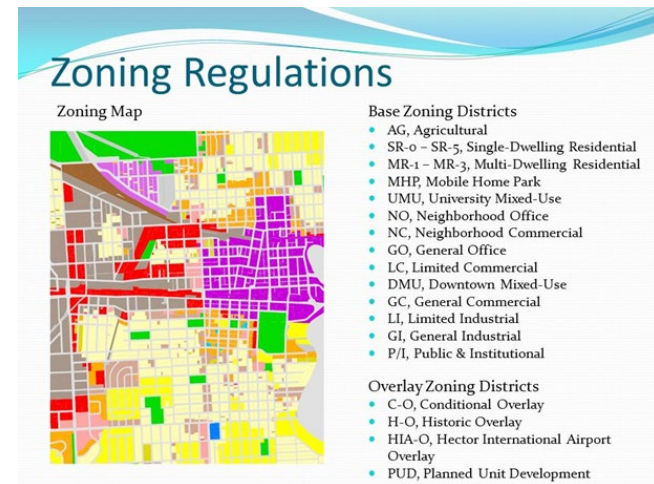
# Affordable Housing Plan Implementation

- Zoning Text and Map Amendments to encourage affordable housing / multifamily housing?
- Tax incentives for multi-use developments that include affordable units?
- Rehabilitation loans to promote improvements to existing affordable units?
- State funding to promote construction of affordable units?
- Partnerships with other nonprofits, e.g., Habitat for Humanity?



# Affordable Housing Regulations

- Create regulations that provide for affordable housing in particular zones in lieu of Affordable Housing Appeals process.
  - Consider infrastructure, sewer, water, transportation.
  - Consider creating floating zones
    - Minimum acreage
    - Density bonuses
  - Financial Feasibility
  - Traffic
  - Buffering



# QUESTIONS?

