



# MUNICIPAL PLANNING FOR AFFORDABLE HOUSING

What Connecticut Municipalities and Their Officials  
Need to Know

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# SPEAKERS

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## Sec. 8-30g Origins & Policy Underpinnings



- 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) (“8-30g” or “Act”) which was passed by the Connecticut Legislature and became effective in 1990.
- Our Supreme Court has noted that 8-30g 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, 8-30g has been strengthened and modified to catalyze affordable housing development at the local government level.
- Gives developers significant leverage in obtaining approvals

# 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 of C.G.S. or Section 1437f of Title 42 of the United States Code. (Also referred to as “Subsidized Housing”)

“**Set-aside development**” means a development where:

- **At least 30% of proposed dwellings** must be deed or covenant restricted **for at least 40 years** such that proposed dwellings must 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 80% 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 60% 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 → includes utilities
- \*NOTE: “**Median income**” in this context is *lesser* of state median income or the subject region’s AMI, as determined by HUD. Family size must be considered.
- \*NOTE: CT Housing Commissioner provides **model deed restriction language** in R.C.S.A. § 8-30g-10

# Affordable Housing Defined (8-30g)

*By Way of 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.

# Why Should Municipalities Care?

## ○ **Public Policy Considerations**

### ➤ **Connecticut Lacks Affordable Housing:**

- A 2021 report by the National Low Income Housing Coalition titled “Out of Reach: The High Cost of Housing” ([https://nlihc.org/sites/default/files/oor/2021/Out-of-Reach\\_2021.pdf](https://nlihc.org/sites/default/files/oor/2021/Out-of-Reach_2021.pdf)) ranked CT as having the 10<sup>th</sup> most expensive **housing wage\*** in the country.
  - \$27.37/hr required to afford a 2-bedroom rental home
  - Must work 2.3 full-time jobs at min. wage to afford 2-BR home
  - FMR for 2-BR homes = \$1,423
- ### ➤ **Do you want your community contributors to be able to live in your community?**
- Attracts business owners and entrepreneurs
  - Attracts a skilled workforce (**workforce housing**)

## ○ **Statutory Mandates (Ch. 126a of C.G.S. – Sec. 8-30g et seq.)**

- .Your municipality is subject to 8-30g Appeals brought by applicants 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 8-30g 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 - 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	2021 Percent Affordable
Ansonia	8,148	366	799	138	0	1,303	15.99%
Bloomfield	9,019	574	114	303	0	991	10.99%
Bridgeport	57,012	6,949	4351	815	19	12,134	21.28%
Bristol	27,011	2,006	950	1,031	0	3,987	14.76%
Danbury	31,154	1,652	1258	465	221	3,596	11.54%
Derby	5,849	275	314	102	0	691	11.81%
East Hartford	21,328	1,593	809	964	0	3,366	15.78%
East Windsor	5,045	559	37	102	0	698	13.84%
Enfield	17,558	1,360	221	592	7	2,180	12.42%
Groton	17,978	3,727	103	335	10	4,175	23.22%
Hartford	51,822	10,733	8,723	1,441	0	20,897	40.32%
Killingly	7,592	467	152	167	0	786	10.35%
Manchester	25,996	1,871	979	872	32	3,754	14.44%
Meriden	25,892	1,976	1,360	956	11	4,303	16.62%
Middletown	21,223	3,116	1,129	486	25	4,756	22.41%
New Britain	31,226	3,017	1,583	1,109	100	5,809	18.60%
New Haven	54,967	9,652	7,142	891	457	18,142	33.01%
New London	11,840	1,600	490	475	101	2,666	22.52%
North Canaan	1,587	148	0	14	0	162	10.21%
Norwalk	35,415	2,245	1,546	385	667	4,843	13.67%
Norwich	18,659	2,296	796	516	0	3,608	19.34%
Plainfield	6,229	377	196	191	4	768	12.33%
Putnam	4,299	413	63	70	0	546	12.70%
Stamford	50,573	4,219	2,073	383	1270	7,945	15.71%
Torrington	16,761	912	328	513	17	1,770	10.56%
Vernon	13,896	1,509	470	348	12	2,339	16.83%
Waterbury	47,991	5,385	3,156	1,597	48	10,186	21.22%
West Haven	22,446	1,024	2,119	395	0	3,538	15.76%
Winchester	5,613	350	170	84	0	604	10.76%
Windham	9,570	1,776	597	338	0	2,711	28.33%
Windsor Locks	5,429	297	154	224	0	675	12.43%

# 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 (per municipal regulatory requirements). See C.G.S. § 8-30g(c).



# 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. **C.G.S. § 8-30g(b)(1).**

# 8-30g Appeal 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 ....” [C.G.S. § 8-30g(g)(1)] **OR**

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

  1. “The application which was the subject of the decision from which such appeal was taken would locate affordable housing in an area which is zoned for industrial use and which does not permit residential uses; **and**
  2. The development is not assisted housing.” [C.G.S. . § 8-30g(g)(2)]
- “If the commission does not satisfy its burden of proof under this subsection [subsection (g)], 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.”

# 8-30g Appeals – Other Considerations

- 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)

- That said, municipalities do have enforcement powers under 8-30g in the same way as they do under C.G.S. § 8-12 (zoning enforcement actions → injunctive relief and civil penalties for violations, etc.).

## ○ Modifications to Plan (C.G.S. § 8-30g(k))

- Modifications to/conditions imposed on plan w/in 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

- Within 15 days of notice of denial of 8-30g application, developer may, by right, submit a proposal to modify the rejected development plan in accordance with some or all of the concerns raised by the commission. → this must be treated as an amendment to original application, meaning it tolls the appeal period.

- You have 65 days to render decision.

## ○ What Does It Really Mean?

- Could potentially disrupt orderly development of town or city (location, public facilities, traffic, density, transit)

- Developers have significant leverage under 8-30g, particularly if there is a pronounced need for affordable housing in your town.

# Moratoria

- The Act does not apply to a municipality where the Commissioner of Housing has published a **Certificate 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.
    - Allows a qualifying municipality to deny 8-30g projects without burden-shifting requirements, subject to several exceptions.
    - However, a qualifying municipality still is expected to continue to develop affordable housing strategies during this moratorium period.
  - 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.
- **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 **C.G.S. § 8-30j**). The affordable plan must specify how the municipality will increase the number of affordable housing developments within its jurisdiction.

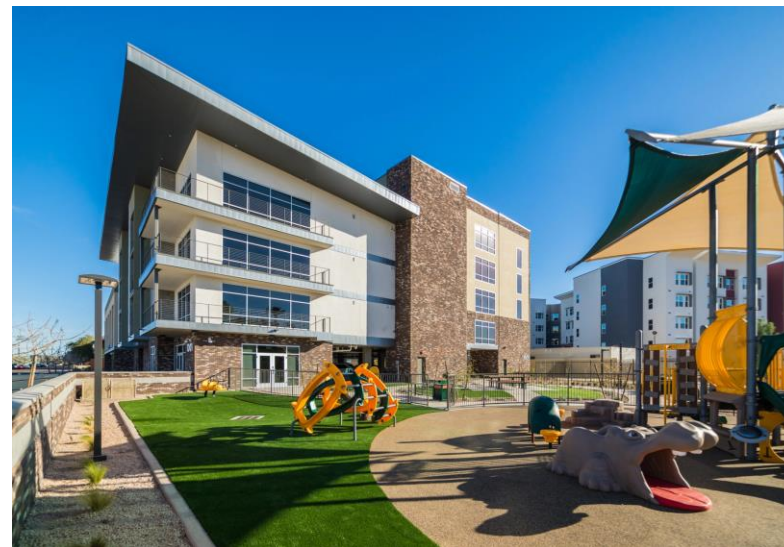


# P.A. 21-29: The Highlights

- **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.
- Increasing availability could:
  - Promote diversity
  - Retain young people and seniors alike
  - Retain volunteers



- *“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.



# The Affordable Housing Plan

- Required by **Section 8-30j of General Statutes** (as amended by Section 20 of P.A. 22-74)
- 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.)



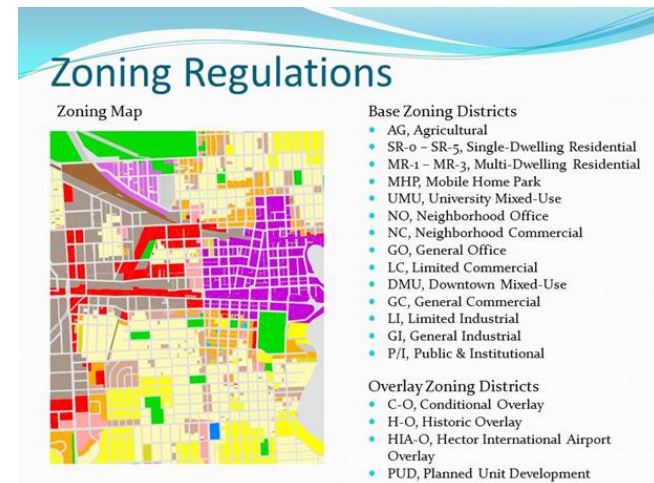
# Affordable Housing Plan Implementation

- 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?

