



General Assembly

Amendment

January Session, 2015

LCO No. 6101



Offered by:

SEN. WINFIELD, 10th Dist.

SEN. HWANG, 28th Dist.

To: Senate Bill No. 407

File No. 291

Cal. No. 222

**"AN ACT CONCERNING THE AFFORDABLE HOUSING LAND USE
APPEALS PROCEDURE."**

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 8-30g of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2015*):

5 (a) As used in this section:

6 (1) "Affordable housing development" means a proposed housing
7 development which is (A) assisted housing, or (B) a set-aside
8 development;

9 (2) "Affordable housing application" means any application made to
10 a commission in connection with an affordable housing development
11 by a person who proposes to develop such affordable housing;

12 (3) "Assisted housing" means housing which is receiving, or will
13 receive, financial assistance under any governmental program for the
14 construction or substantial rehabilitation of low and moderate income
15 housing, and any housing occupied by persons receiving rental
16 assistance under chapter 319uu or Section 1437f of Title 42 of the
17 United States Code;

18 (4) "Commission" means a zoning commission, planning
19 commission, planning and zoning commission, zoning board of
20 appeals or municipal agency exercising zoning or planning authority;

21 (5) "Municipality" means any town, city or borough, whether
22 consolidated or unconsolidated;

23 (6) "Set-aside development" means a development in which not less
24 than thirty per cent of the dwelling units will be conveyed by deeds
25 containing covenants or restrictions which shall require that, for at
26 least forty years after the initial occupation of the proposed
27 development, such dwelling units shall be sold or rented at, or below,
28 prices which will preserve the units as housing for which persons and
29 families pay thirty per cent or less of their annual income, where such
30 income is less than or equal to eighty per cent of the median income. In
31 a set-aside development, of the dwelling units conveyed by deeds
32 containing covenants or restrictions, a number of dwelling units equal
33 to not less than fifteen per cent of all dwelling units in the
34 development shall be sold or rented to persons and families whose
35 income is less than or equal to sixty per cent of the median income and
36 the remainder of the dwelling units conveyed by deeds containing
37 covenants or restrictions shall be sold or rented to persons and families
38 whose income is less than or equal to eighty per cent of the median
39 income;

40 (7) "Median income" means, after adjustments for family size, the
41 lesser of the state median income or the area median income for the
42 area in which the municipality containing the affordable housing
43 development is located, as determined by the United States

44 Department of Housing and Urban Development; and

45 (8) "Commissioner" means the Commissioner of Housing.

46 (b) (1) Any person filing an affordable housing application with a
47 commission shall submit, as part of the application, an affordability
48 plan which shall include at least the following: (A) Designation of the
49 person, entity or agency that will be responsible for the duration of any
50 affordability restrictions, for the administration of the affordability
51 plan and its compliance with the income limits and sale price or rental
52 restrictions of this chapter; (B) an affirmative fair housing marketing
53 plan governing the sale or rental of all dwelling units; (C) a sample
54 calculation of the maximum sales prices or rents of the intended
55 affordable dwelling units; (D) a description of the projected sequence
56 in which, within a set-aside development, the affordable dwelling
57 units will be built and offered for occupancy and the general location
58 of such units within the proposed development; and (E) draft zoning
59 regulations, conditions of approvals, deeds, restrictive covenants or
60 lease provisions that will govern the affordable dwelling units.

61 (2) The commissioner shall, within available appropriations, adopt
62 regulations pursuant to chapter 54 regarding the affordability plan.
63 Such regulations may include additional criteria for preparing an
64 affordability plan and shall include: (A) A formula for determining
65 rent levels and sale prices, including establishing maximum allowable
66 down payments to be used in the calculation of maximum allowable
67 sales prices; (B) a clarification of the costs that are to be included when
68 calculating maximum allowed rents and sale prices; (C) a clarification
69 as to how family size and bedroom counts are to be equated in
70 establishing maximum rental and sale prices for the affordable units;
71 and (D) a listing of the considerations to be included in the
72 computation of income under this section.

73 (c) Any commission, by regulation, may require that an affordable
74 housing application seeking a change of zone shall include the
75 submission of a conceptual site plan describing the proposed

76 development's total number of residential units and their arrangement
77 on the property and the proposed development's roads and traffic
78 circulation, sewage disposal and water supply.

79 (d) For any affordable dwelling unit that is rented as part of a set-
80 aside development, if the maximum monthly housing cost, as
81 calculated in accordance with subdivision (6) of subsection (a) of this
82 section, would exceed one hundred per cent of the Section 8 fair
83 market rent as determined by the United States Department of
84 Housing and Urban Development, in the case of units set aside for
85 persons and families whose income is less than or equal to sixty per
86 cent of median income, then such maximum monthly housing cost
87 shall not exceed one hundred per cent of said Section 8 fair market
88 rent. If the maximum monthly housing cost, as calculated in
89 accordance with subdivision (6) of subsection (a) of this section, would
90 exceed one hundred twenty per cent of the Section 8 fair market rent,
91 as determined by the United States Department of Housing and Urban
92 Development, in the case of units set aside for persons and families
93 whose income is less than or equal to eighty per cent of median
94 income, then such maximum monthly housing cost shall not exceed
95 one hundred twenty per cent of such Section 8 fair market rent.

96 (e) For any affordable dwelling unit that is rented in order to
97 comply with the requirements of a set-aside development, no person
98 shall impose on a prospective tenant who is receiving governmental
99 rental assistance a maximum percentage-of-income-for-housing
100 requirement that is more restrictive than the requirement, if any,
101 imposed by such governmental assistance program.

102 (f) Any person whose affordable housing application is denied, or is
103 approved with restrictions which have a substantial adverse impact on
104 the viability of the affordable housing development or the degree of
105 affordability of the affordable dwelling units in a set-aside
106 development, may appeal such decision pursuant to the procedures of
107 this section. Such appeal shall be filed within the time period for filing
108 appeals as set forth in section 8-8, 8-9, 8-28 or 8-30a, as applicable, and

109 shall be made returnable to the superior court for the judicial district
110 where the real property which is the subject of the application is
111 located. Affordable housing appeals, including pretrial motions, shall
112 be heard by a judge assigned by the Chief Court Administrator to hear
113 such appeals. To the extent practicable, efforts shall be made to assign
114 such cases to a small number of judges, sitting in geographically
115 diverse parts of the state, so that a consistent body of expertise can be
116 developed. Unless otherwise ordered by the Chief Court
117 Administrator, such appeals, including pretrial motions, shall be heard
118 by such assigned judges in the judicial district in which such judge is
119 sitting. Appeals taken pursuant to this subsection shall be privileged
120 cases to be heard by the court as soon after the return day as is
121 practicable. Except as otherwise provided in this section, appeals
122 involving an affordable housing application shall proceed in
123 conformance with the provisions of said section 8-8, 8-9, 8-28 or 8-30a,
124 as applicable.

125 (g) Upon an appeal taken under subsection (f) of this section, the
126 burden shall be on the commission to prove, based upon the evidence
127 in the record compiled before such commission, that the decision from
128 which such appeal is taken and the reasons cited for such decision are
129 supported by sufficient evidence in the record. The commission shall
130 also have the burden to prove, based upon the evidence in the record
131 compiled before such commission, that (1) (A) the decision is necessary
132 to protect substantial public interests in health, safety or other matters
133 which the commission may legally consider; (B) such public interests
134 clearly outweigh the need for affordable housing; and (C) such public
135 interests cannot be protected by reasonable changes to the affordable
136 housing development, or (2) (A) the application which was the subject
137 of the decision from which such appeal was taken would locate
138 affordable housing in an area which is zoned for industrial use and
139 which does not permit residential uses; and (B) the development is not
140 assisted housing, as defined in subsection (a) of this section. If the
141 commission does not satisfy its burden of proof under this subsection,
142 the court shall wholly or partly revise, modify, remand or reverse the

143 decision from which the appeal was taken in a manner consistent with
144 the evidence in the record before it.

145 (h) Following a decision by a commission to reject an affordable
146 housing application or to approve an application with restrictions
147 which have a substantial adverse impact on the viability of the
148 affordable housing development or the degree of affordability of the
149 affordable dwelling units, the applicant may, within the period for
150 filing an appeal of such decision, submit to the commission a proposed
151 modification of its proposal responding to some or all of the objections
152 or restrictions articulated by the commission, which shall be treated as
153 an amendment to the original proposal. The day of receipt of such a
154 modification shall be determined in the same manner as the day of
155 receipt is determined for an original application. The filing of such a
156 proposed modification shall stay the period for filing an appeal from
157 the decision of the commission on the original application. The
158 commission shall hold a public hearing on the proposed modification
159 if it held a public hearing on the original application and may hold a
160 public hearing on the proposed modification if it did not hold a public
161 hearing on the original application. The commission shall render a
162 decision on the proposed modification not later than sixty-five days
163 after the receipt of such proposed modification, provided, if, in
164 connection with a modification submitted under this subsection, the
165 applicant applies for a permit for an activity regulated pursuant to
166 sections 22a-36 to 22a-45, inclusive, and the time for a decision by the
167 commission on such modification under this subsection would lapse
168 prior to the thirty-fifth day after a decision by an inland wetlands and
169 watercourses agency, the time period for decision by the commission
170 on the modification under this subsection shall be extended to thirty-
171 five days after the decision of such agency. The commission shall issue
172 notice of its decision as provided by law. Failure of the commission to
173 render a decision within said sixty-five days or subsequent extension
174 period permitted by this subsection shall constitute a rejection of the
175 proposed modification. Within the time period for filing an appeal on
176 the proposed modification as set forth in section 8-8, 8-9, 8-28 or 8-30a,

177 as applicable, the applicant may appeal the commission's decision on
178 the original application and the proposed modification in the manner
179 set forth in this section. Nothing in this subsection shall be construed
180 to limit the right of an applicant to appeal the original decision of the
181 commission in the manner set forth in this section without submitting
182 a proposed modification or to limit the issues which may be raised in
183 any appeal under this section.

184 (i) Nothing in this section shall be deemed to preclude any right of
185 appeal under the provisions of section 8-8, 8-9, 8-28 or 8-30a.

186 (j) A commission or its designated authority shall have, with respect
187 to compliance of an affordable housing development with the
188 provisions of this chapter, the same powers and remedies provided to
189 commissions by section 8-12.

190 (k) Notwithstanding the provisions of subsections (a) to (j),
191 inclusive, of this section, the affordable housing appeals procedure
192 established under this section shall not be available if (1) the proposed
193 development which is the subject of the application contains less than
194 four affordable dwelling units, or (2) the real property which is the
195 subject of the application is located in a municipality in which at least
196 ten per cent of all dwelling units in the municipality are [(1)] (A)
197 assisted housing, or [(2)] (B) currently financed by Connecticut
198 Housing Finance Authority mortgages, or [(3)] (C) subject to binding
199 recorded deeds containing covenants or restrictions which require that
200 such dwelling units be sold or rented at, or below, prices which will
201 preserve the units as housing for which persons and families pay thirty
202 per cent or less of income, where such income is less than or equal to
203 eighty per cent of the median income, or [(4)] (D) mobile manufactured
204 homes located in mobile manufactured home parks or legally
205 approved accessory apartments, which homes or apartments are
206 subject to binding recorded deeds containing covenants or restrictions
207 which require that such dwelling units be sold or rented at, or below,
208 prices which will preserve the units as housing for which, for a period
209 of not less than ten years, persons and families pay thirty per cent or

210 less of income, where such income is less than or equal to eighty per
211 cent of the median income. The municipalities meeting the criteria set
212 forth in this subsection shall be listed in the report submitted under
213 section 8-37qq. As used in subdivision (2) of this subsection,
214 "accessory apartment" means a separate living unit that [(A)] (i) is
215 attached to the main living unit of a house, which house has the
216 external appearance of a single-family residence, [(B)] (ii) has a full
217 kitchen, [(C)] (iii) has a square footage that is not more than thirty per
218 cent of the total square footage of the house, [(D)] (iv) has an internal
219 doorway connecting to the main living unit of the house, [(E)] (v) is not
220 billed separately from such main living unit for utilities, and [(F)] (vi)
221 complies with the building code and health and safety regulations.

222 (l) (1) Notwithstanding the provisions of subsections (a) to (j),
223 inclusive, of this section, the affordable housing appeals procedure
224 established under this section shall not be applicable to an affordable
225 housing application filed with a commission during a moratorium,
226 which shall be the four-year period after (A) a certification of
227 affordable housing project completion issued by the commissioner is
228 published in the Connecticut Law Journal, or (B) after notice of a
229 provisional approval is published pursuant to subdivision (4) of this
230 subsection. Any moratorium that is in effect on October 1, 2002, is
231 extended by one year.

232 (2) Notwithstanding the provisions of this subsection, such
233 moratorium shall not apply to (A) affordable housing applications for
234 assisted housing in which ninety-five per cent of the dwelling units are
235 restricted to persons and families whose income is less than or equal to
236 sixty per cent of median income, (B) other affordable housing
237 applications for assisted housing containing forty or fewer dwelling
238 units, or (C) affordable housing applications which were filed with a
239 commission pursuant to this section prior to the date upon which the
240 moratorium takes effect.

241 (3) Eligible units completed after a moratorium has begun may be
242 counted toward establishing eligibility for a subsequent moratorium.

243 (4) (A) The commissioner shall issue a certificate of affordable
244 housing project completion for the purposes of this subsection upon
245 finding that there has been completed within the municipality one or
246 more affordable housing developments which create housing unit-
247 equivalent points equal to the greater of two per cent of all dwelling
248 units in the municipality, as reported in the most recent United States
249 decennial census, or [seventy-five] fifty housing unit-equivalent points.

250 (B) A municipality may apply for a certificate of affordable housing
251 project completion pursuant to this subsection by applying in writing
252 to the commissioner, and including documentation showing that the
253 municipality has accumulated the required number of points within
254 the applicable time period. Such documentation shall include the
255 location of each dwelling unit being counted, the number of points
256 each dwelling unit has been assigned, and the reason, pursuant to this
257 subsection, for assigning such points to such dwelling unit. Upon
258 receipt of such application, the commissioner shall promptly cause a
259 notice of the filing of the application to be published in the Connecticut
260 Law Journal, stating that public comment on such application shall be
261 accepted by the commissioner for a period of thirty days after the
262 publication of such notice. Not later than ninety days after the receipt
263 of such application, the commissioner shall either approve or reject
264 such application. Such approval or rejection shall be accompanied by a
265 written statement of the reasons for approval or rejection, pursuant to
266 the provisions of this subsection. If the application is approved, the
267 commissioner shall promptly cause a certificate of affordable housing
268 project completion to be published in the Connecticut Law Journal. If
269 the commissioner fails to either approve or reject the application
270 within such ninety-day period, such application shall be deemed
271 provisionally approved, and the municipality may cause notice of such
272 provisional approval to be published in a conspicuous manner in a
273 daily newspaper having general circulation in the municipality, in
274 which case, such moratorium shall take effect upon such publication.
275 The municipality shall send a copy of such notice to the commissioner.
276 Such provisional approval shall remain in effect unless the

277 commissioner subsequently acts upon and rejects the application, in
278 which case the moratorium shall terminate upon notice to the
279 municipality by the commissioner.

280 (5) For purposes of this subsection, "elderly units" are dwelling units
281 whose occupancy is restricted by age and "family units" are dwelling
282 units whose occupancy is not restricted by age.

283 (6) For purposes of this subsection, housing unit-equivalent points
284 shall be determined by the commissioner as follows: (A) No points
285 shall be awarded for a unit unless its occupancy is restricted to persons
286 and families whose income is equal to or less than eighty per cent of
287 median income, except that unrestricted units in a set-aside
288 development shall be awarded one-fourth point each. (B) Family units
289 restricted to persons and families whose income is equal to or less than
290 eighty per cent of median income shall be awarded one point if an
291 ownership unit and one and one-half points if a rental unit. (C) Family
292 units restricted to persons and families whose income is equal to or
293 less than sixty per cent of median income shall be awarded one and
294 one-half points if an ownership unit and two points if a rental unit. (D)
295 Family units restricted to persons and families whose income is equal
296 to or less than forty per cent of median income shall be awarded two
297 points if an ownership unit and two and one-half points if a rental
298 unit. (E) Restricted family units containing at least three bedrooms
299 shall be awarded an additional one-fourth point. (F) Elderly units
300 restricted to persons and families whose income is equal to or less than
301 eighty per cent of median income shall be awarded one-half point. [(F)]
302 (G) If at least sixty per cent of the total restricted units submitted by a
303 municipality as part of an application for a certificate of affordable
304 housing project completion are family units, any elderly units
305 submitted within such application shall be awarded an additional one-
306 half point. (H) Restricted family units located within an approved
307 incentive housing development, as defined in section 8-13m, as
308 amended by this act, shall be awarded an additional one-fourth point.
309 (I) A set-aside development containing family units which are rental

310 units shall be awarded additional points equal to twenty-two per cent
311 of the total points awarded to such development, provided the
312 application for such development was filed with the commission prior
313 to July 6, 1995.

314 (7) Points shall be awarded only for dwelling units which were (A)
315 newly-constructed units in an affordable housing development, as that
316 term was defined at the time of the affordable housing application, for
317 which a certificate of occupancy was issued after July 1, 1990, [or] (B)
318 newly subjected after July 1, 1990, to deeds containing covenants or
319 restrictions which require that, for at least the duration required by
320 subsection (a) of this section for set-aside developments on the date
321 when such covenants or restrictions took effect, such dwelling units
322 shall be sold or rented at, or below, prices which will preserve the
323 units as affordable housing for persons or families whose income does
324 not exceed eighty per cent of median income, or (C) located within an
325 approved incentive housing development, as defined in section 8-13m,
326 as amended by this act.

327 (8) Points shall be subtracted, applying the formula in subdivision
328 (6) of this subsection, for any affordable dwelling unit which, on or
329 after July 1, 1990, was affected by any action taken by a municipality
330 which caused such dwelling unit to cease being counted as an
331 affordable dwelling unit.

332 (9) A newly-constructed unit shall be counted toward a moratorium
333 when it receives a certificate of occupancy. A newly-restricted unit
334 shall be counted toward a moratorium when its deed restriction takes
335 effect.

336 (10) The affordable housing appeals procedure shall be applicable to
337 affordable housing applications filed with a commission after a three-
338 year moratorium expires, except (A) as otherwise provided in
339 subsection (k) of this section, or (B) when sufficient unit-equivalent
340 points have been created within the municipality during one
341 moratorium to qualify for a subsequent moratorium.

342 (11) The commissioner shall, within available appropriations, adopt
343 regulations in accordance with chapter 54 to carry out the purposes of
344 this subsection. Such regulations shall specify the procedure to be
345 followed by a municipality to obtain a moratorium, and shall include
346 the manner in which a municipality is to document the units to be
347 counted toward a moratorium. A municipality may apply for a
348 moratorium in accordance with the provisions of this subsection prior
349 to, as well as after, such regulations are adopted.

350 (m) The commissioner shall, pursuant to regulations adopted in
351 accordance with the provisions of chapter 54, promulgate model deed
352 restrictions which satisfy the requirements of this section. A
353 municipality may waive any fee which would otherwise be required
354 for the filing of any long-term affordability deed restriction on the land
355 records.

356 Sec. 2. Section 8-30g of the general statutes, as amended by section 1
357 of this act, is repealed and the following is substituted in lieu thereof
358 (*Effective October 1, 2020*):

359 (a) As used in this section:

360 (1) "Affordable housing development" means a proposed housing
361 development which is (A) assisted housing, or (B) a set-aside
362 development;

363 (2) "Affordable housing application" means any application made to
364 a commission in connection with an affordable housing development
365 by a person who proposes to develop such affordable housing;

366 (3) "Assisted housing" means housing which is receiving, or will
367 receive, financial assistance under any governmental program for the
368 construction or substantial rehabilitation of low and moderate income
369 housing, and any housing occupied by persons receiving rental
370 assistance under chapter 319uu or Section 1437f of Title 42 of the
371 United States Code;

372 (4) "Commission" means a zoning commission, planning
373 commission, planning and zoning commission, zoning board of
374 appeals or municipal agency exercising zoning or planning authority;

375 (5) "Municipality" means any town, city or borough, whether
376 consolidated or unconsolidated;

377 (6) "Set-aside development" means a development in which not less
378 than thirty per cent of the dwelling units will be conveyed by deeds
379 containing covenants or restrictions which shall require that, for at
380 least forty years after the initial occupation of the proposed
381 development, such dwelling units shall be sold or rented at, or below,
382 prices which will preserve the units as housing for which persons and
383 families pay thirty per cent or less of their annual income, where such
384 income is less than or equal to eighty per cent of the median income. In
385 a set-aside development, of the dwelling units conveyed by deeds
386 containing covenants or restrictions, a number of dwelling units equal
387 to not less than fifteen per cent of all dwelling units in the
388 development shall be sold or rented to persons and families whose
389 income is less than or equal to sixty per cent of the median income and
390 the remainder of the dwelling units conveyed by deeds containing
391 covenants or restrictions shall be sold or rented to persons and families
392 whose income is less than or equal to eighty per cent of the median
393 income;

394 (7) "Median income" means, after adjustments for family size, the
395 lesser of the state median income or the area median income for the
396 area in which the municipality containing the affordable housing
397 development is located, as determined by the United States
398 Department of Housing and Urban Development; and

399 (8) "Commissioner" means the Commissioner of Housing.

400 (b) (1) Any person filing an affordable housing application with a
401 commission shall submit, as part of the application, an affordability
402 plan which shall include at least the following: (A) Designation of the

403 person, entity or agency that will be responsible for the duration of any
404 affordability restrictions, for the administration of the affordability
405 plan and its compliance with the income limits and sale price or rental
406 restrictions of this chapter; (B) an affirmative fair housing marketing
407 plan governing the sale or rental of all dwelling units; (C) a sample
408 calculation of the maximum sales prices or rents of the intended
409 affordable dwelling units; (D) a description of the projected sequence
410 in which, within a set-aside development, the affordable dwelling
411 units will be built and offered for occupancy and the general location
412 of such units within the proposed development; and (E) draft zoning
413 regulations, conditions of approvals, deeds, restrictive covenants or
414 lease provisions that will govern the affordable dwelling units.

415 (2) The commissioner shall, within available appropriations, adopt
416 regulations pursuant to chapter 54 regarding the affordability plan.
417 Such regulations may include additional criteria for preparing an
418 affordability plan and shall include: (A) A formula for determining
419 rent levels and sale prices, including establishing maximum allowable
420 down payments to be used in the calculation of maximum allowable
421 sales prices; (B) a clarification of the costs that are to be included when
422 calculating maximum allowed rents and sale prices; (C) a clarification
423 as to how family size and bedroom counts are to be equated in
424 establishing maximum rental and sale prices for the affordable units;
425 and (D) a listing of the considerations to be included in the
426 computation of income under this section.

427 (c) Any commission, by regulation, may require that an affordable
428 housing application seeking a change of zone shall include the
429 submission of a conceptual site plan describing the proposed
430 development's total number of residential units and their arrangement
431 on the property and the proposed development's roads and traffic
432 circulation, sewage disposal and water supply.

433 (d) For any affordable dwelling unit that is rented as part of a set-
434 aside development, if the maximum monthly housing cost, as
435 calculated in accordance with subdivision (6) of subsection (a) of this

436 section, would exceed one hundred per cent of the Section 8 fair
437 market rent as determined by the United States Department of
438 Housing and Urban Development, in the case of units set aside for
439 persons and families whose income is less than or equal to sixty per
440 cent of median income, then such maximum monthly housing cost
441 shall not exceed one hundred per cent of said Section 8 fair market
442 rent. If the maximum monthly housing cost, as calculated in
443 accordance with subdivision (6) of subsection (a) of this section, would
444 exceed one hundred twenty per cent of the Section 8 fair market rent,
445 as determined by the United States Department of Housing and Urban
446 Development, in the case of units set aside for persons and families
447 whose income is less than or equal to eighty per cent of median
448 income, then such maximum monthly housing cost shall not exceed
449 one hundred twenty per cent of such Section 8 fair market rent.

450 (e) For any affordable dwelling unit that is rented in order to
451 comply with the requirements of a set-aside development, no person
452 shall impose on a prospective tenant who is receiving governmental
453 rental assistance a maximum percentage-of-income-for-housing
454 requirement that is more restrictive than the requirement, if any,
455 imposed by such governmental assistance program.

456 (f) Any person whose affordable housing application is denied, or is
457 approved with restrictions which have a substantial adverse impact on
458 the viability of the affordable housing development or the degree of
459 affordability of the affordable dwelling units in a set-aside
460 development, may appeal such decision pursuant to the procedures of
461 this section. Such appeal shall be filed within the time period for filing
462 appeals as set forth in section 8-8, 8-9, 8-28 or 8-30a, as applicable, and
463 shall be made returnable to the superior court for the judicial district
464 where the real property which is the subject of the application is
465 located. Affordable housing appeals, including pretrial motions, shall
466 be heard by a judge assigned by the Chief Court Administrator to hear
467 such appeals. To the extent practicable, efforts shall be made to assign
468 such cases to a small number of judges, sitting in geographically

469 diverse parts of the state, so that a consistent body of expertise can be
470 developed. Unless otherwise ordered by the Chief Court
471 Administrator, such appeals, including pretrial motions, shall be heard
472 by such assigned judges in the judicial district in which such judge is
473 sitting. Appeals taken pursuant to this subsection shall be privileged
474 cases to be heard by the court as soon after the return day as is
475 practicable. Except as otherwise provided in this section, appeals
476 involving an affordable housing application shall proceed in
477 conformance with the provisions of said section 8-8, 8-9, 8-28 or 8-30a,
478 as applicable.

479 (g) Upon an appeal taken under subsection (f) of this section, the
480 burden shall be on the commission to prove, based upon the evidence
481 in the record compiled before such commission, that the decision from
482 which such appeal is taken and the reasons cited for such decision are
483 supported by sufficient evidence in the record. The commission shall
484 also have the burden to prove, based upon the evidence in the record
485 compiled before such commission, that (1) (A) the decision is necessary
486 to protect substantial public interests in health, safety or other matters
487 which the commission may legally consider; (B) such public interests
488 clearly outweigh the need for affordable housing; and (C) such public
489 interests cannot be protected by reasonable changes to the affordable
490 housing development, or (2) (A) the application which was the subject
491 of the decision from which such appeal was taken would locate
492 affordable housing in an area which is zoned for industrial use and
493 which does not permit residential uses; and (B) the development is not
494 assisted housing, as defined in subsection (a) of this section. If the
495 commission does not satisfy its burden of proof under this subsection,
496 the court shall wholly or partly revise, modify, remand or reverse the
497 decision from which the appeal was taken in a manner consistent with
498 the evidence in the record before it.

499 (h) Following a decision by a commission to reject an affordable
500 housing application or to approve an application with restrictions
501 which have a substantial adverse impact on the viability of the

502 affordable housing development or the degree of affordability of the
503 affordable dwelling units, the applicant may, within the period for
504 filing an appeal of such decision, submit to the commission a proposed
505 modification of its proposal responding to some or all of the objections
506 or restrictions articulated by the commission, which shall be treated as
507 an amendment to the original proposal. The day of receipt of such a
508 modification shall be determined in the same manner as the day of
509 receipt is determined for an original application. The filing of such a
510 proposed modification shall stay the period for filing an appeal from
511 the decision of the commission on the original application. The
512 commission shall hold a public hearing on the proposed modification
513 if it held a public hearing on the original application and may hold a
514 public hearing on the proposed modification if it did not hold a public
515 hearing on the original application. The commission shall render a
516 decision on the proposed modification not later than sixty-five days
517 after the receipt of such proposed modification, provided, if, in
518 connection with a modification submitted under this subsection, the
519 applicant applies for a permit for an activity regulated pursuant to
520 sections 22a-36 to 22a-45, inclusive, and the time for a decision by the
521 commission on such modification under this subsection would lapse
522 prior to the thirty-fifth day after a decision by an inland wetlands and
523 watercourses agency, the time period for decision by the commission
524 on the modification under this subsection shall be extended to thirty-
525 five days after the decision of such agency. The commission shall issue
526 notice of its decision as provided by law. Failure of the commission to
527 render a decision within said sixty-five days or subsequent extension
528 period permitted by this subsection shall constitute a rejection of the
529 proposed modification. Within the time period for filing an appeal on
530 the proposed modification as set forth in section 8-8, 8-9, 8-28 or 8-30a,
531 as applicable, the applicant may appeal the commission's decision on
532 the original application and the proposed modification in the manner
533 set forth in this section. Nothing in this subsection shall be construed
534 to limit the right of an applicant to appeal the original decision of the
535 commission in the manner set forth in this section without submitting
536 a proposed modification or to limit the issues which may be raised in

537 any appeal under this section.

538 (i) Nothing in this section shall be deemed to preclude any right of
539 appeal under the provisions of section 8-8, 8-9, 8-28 or 8-30a.

540 (j) A commission or its designated authority shall have, with respect
541 to compliance of an affordable housing development with the
542 provisions of this chapter, the same powers and remedies provided to
543 commissions by section 8-12.

544 (k) Notwithstanding the provisions of subsections (a) to (j),
545 inclusive, of this section, the affordable housing appeals procedure
546 established under this section shall not be available if [(1) the proposed
547 development which is the subject of the application contains less than
548 four affordable dwelling units, or (2)] the real property which is the
549 subject of the application is located in a municipality in which at least
550 ten per cent of all dwelling units in the municipality are [(A)] (1)
551 assisted housing, or [(B)] (2) currently financed by Connecticut
552 Housing Finance Authority mortgages, or [(C)] (3) subject to binding
553 recorded deeds containing covenants or restrictions which require that
554 such dwelling units be sold or rented at, or below, prices which will
555 preserve the units as housing for which persons and families pay thirty
556 per cent or less of income, where such income is less than or equal to
557 eighty per cent of the median income, or [(D)] (4) mobile manufactured
558 homes located in mobile manufactured home parks or legally
559 approved accessory apartments, which homes or apartments are
560 subject to binding recorded deeds containing covenants or restrictions
561 which require that such dwelling units be sold or rented at, or below,
562 prices which will preserve the units as housing for which, for a period
563 of not less than ten years, persons and families pay thirty per cent or
564 less of income, where such income is less than or equal to eighty per
565 cent of the median income. The municipalities meeting the criteria set
566 forth in this subsection shall be listed in the report submitted under
567 section 8-37qqq. As used in [subdivision (2) of] this subsection,
568 "accessory apartment" means a separate living unit that [(i)] (A) is
569 attached to the main living unit of a house, which house has the

570 external appearance of a single-family residence, [(ii)] (B) has a full
571 kitchen, [(C)] (iii) has a square footage that is not more than thirty per
572 cent of the total square footage of the house, [(iv)] (D) has an internal
573 doorway connecting to the main living unit of the house, [(v)] (E) is not
574 billed separately from such main living unit for utilities, and [(vi)] (F)
575 complies with the building code and health and safety regulations.

576 (l) (1) Notwithstanding the provisions of subsections (a) to (j),
577 inclusive, of this section, the affordable housing appeals procedure
578 established under this section shall not be applicable to an affordable
579 housing application filed with a commission during a moratorium,
580 which shall be the four-year period after (A) a certification of
581 affordable housing project completion issued by the commissioner is
582 published in the Connecticut Law Journal, or (B) after notice of a
583 provisional approval is published pursuant to subdivision (4) of this
584 subsection. Any moratorium that is in effect on October 1, 2002, is
585 extended by one year.

586 (2) Notwithstanding the provisions of this subsection, such
587 moratorium shall not apply to (A) affordable housing applications for
588 assisted housing in which ninety-five per cent of the dwelling units are
589 restricted to persons and families whose income is less than or equal to
590 sixty per cent of median income, (B) other affordable housing
591 applications for assisted housing containing forty or fewer dwelling
592 units, or (C) affordable housing applications which were filed with a
593 commission pursuant to this section prior to the date upon which the
594 moratorium takes effect.

595 (3) Eligible units completed after a moratorium has begun may be
596 counted toward establishing eligibility for a subsequent moratorium.

597 (4) (A) The commissioner shall issue a certificate of affordable
598 housing project completion for the purposes of this subsection upon
599 finding that there has been completed within the municipality one or
600 more affordable housing developments which create housing unit-
601 equivalent points equal to the greater of two per cent of all dwelling

602 units in the municipality, as reported in the most recent United States
603 decennial census, or [fifty] seventy-five housing unit-equivalent points.

604 (B) A municipality may apply for a certificate of affordable housing
605 project completion pursuant to this subsection by applying in writing
606 to the commissioner, and including documentation showing that the
607 municipality has accumulated the required number of points within
608 the applicable time period. Such documentation shall include the
609 location of each dwelling unit being counted, the number of points
610 each dwelling unit has been assigned, and the reason, pursuant to this
611 subsection, for assigning such points to such dwelling unit. Upon
612 receipt of such application, the commissioner shall promptly cause a
613 notice of the filing of the application to be published in the Connecticut
614 Law Journal, stating that public comment on such application shall be
615 accepted by the commissioner for a period of thirty days after the
616 publication of such notice. Not later than ninety days after the receipt
617 of such application, the commissioner shall either approve or reject
618 such application. Such approval or rejection shall be accompanied by a
619 written statement of the reasons for approval or rejection, pursuant to
620 the provisions of this subsection. If the application is approved, the
621 commissioner shall promptly cause a certificate of affordable housing
622 project completion to be published in the Connecticut Law Journal. If
623 the commissioner fails to either approve or reject the application
624 within such ninety-day period, such application shall be deemed
625 provisionally approved, and the municipality may cause notice of such
626 provisional approval to be published in a conspicuous manner in a
627 daily newspaper having general circulation in the municipality, in
628 which case, such moratorium shall take effect upon such publication.
629 The municipality shall send a copy of such notice to the commissioner.
630 Such provisional approval shall remain in effect unless the
631 commissioner subsequently acts upon and rejects the application, in
632 which case the moratorium shall terminate upon notice to the
633 municipality by the commissioner.

634 (5) For purposes of this subsection, "elderly units" are dwelling units

635 whose occupancy is restricted by age and "family units" are dwelling
636 units whose occupancy is not restricted by age.

637 (6) For purposes of this subsection, housing unit-equivalent points
638 shall be determined by the commissioner as follows: (A) No points
639 shall be awarded for a unit unless its occupancy is restricted to persons
640 and families whose income is equal to or less than eighty per cent of
641 median income, except that unrestricted units in a set-aside
642 development shall be awarded one-fourth point each. (B) Family units
643 restricted to persons and families whose income is equal to or less than
644 eighty per cent of median income shall be awarded one point if an
645 ownership unit and one and one-half points if a rental unit. (C) Family
646 units restricted to persons and families whose income is equal to or
647 less than sixty per cent of median income shall be awarded one and
648 one-half points if an ownership unit and two points if a rental unit. (D)
649 Family units restricted to persons and families whose income is equal
650 to or less than forty per cent of median income shall be awarded two
651 points if an ownership unit and two and one-half points if a rental
652 unit. (E) [Restricted family units containing at least three bedrooms
653 shall be awarded an additional one-fourth point. (F)] Elderly units
654 restricted to persons and families whose income is equal to or less than
655 eighty per cent of median income shall be awarded one-half point. (F)
656 [(G) If at least sixty per cent of the total restricted units submitted by a
657 municipality as part of an application for a certificate of affordable
658 housing project completion are family units, any elderly units
659 submitted within such application shall be awarded an additional one-
660 half point. (H) Restricted family units located within an approved
661 incentive housing development, as defined in section 8-13m, as
662 amended by this act, shall be awarded an additional one-fourth point.
663 (I)] A set-aside development containing family units which are rental
664 units shall be awarded additional points equal to twenty-two per cent
665 of the total points awarded to such development, provided the
666 application for such development was filed with the commission prior
667 to July 6, 1995.

668 (7) Points shall be awarded only for dwelling units which were (A)
669 newly-constructed units in an affordable housing development, as that
670 term was defined at the time of the affordable housing application, for
671 which a certificate of occupancy was issued after July 1, 1990, or (B)
672 newly subjected after July 1, 1990, to deeds containing covenants or
673 restrictions which require that, for at least the duration required by
674 subsection (a) of this section for set-aside developments on the date
675 when such covenants or restrictions took effect, such dwelling units
676 shall be sold or rented at, or below, prices which will preserve the
677 units as affordable housing for persons or families whose income does
678 not exceed eighty per cent of median income. [or (C) located within
679 an approved incentive housing development, as defined in section 8-
680 13m, as amended by this act.]

681 (8) Points shall be subtracted, applying the formula in subdivision
682 (6) of this subsection, for any affordable dwelling unit which, on or
683 after July 1, 1990, was affected by any action taken by a municipality
684 which caused such dwelling unit to cease being counted as an
685 affordable dwelling unit.

686 (9) A newly-constructed unit shall be counted toward a moratorium
687 when it receives a certificate of occupancy. A newly-restricted unit
688 shall be counted toward a moratorium when its deed restriction takes
689 effect.

690 (10) The affordable housing appeals procedure shall be applicable to
691 affordable housing applications filed with a commission after a three-
692 year moratorium expires, except (A) as otherwise provided in
693 subsection (k) of this section, or (B) when sufficient unit-equivalent
694 points have been created within the municipality during one
695 moratorium to qualify for a subsequent moratorium.

696 (11) The commissioner shall, within available appropriations, adopt
697 regulations in accordance with chapter 54 to carry out the purposes of
698 this subsection. Such regulations shall specify the procedure to be
699 followed by a municipality to obtain a moratorium, and shall include

700 the manner in which a municipality is to document the units to be
701 counted toward a moratorium. A municipality may apply for a
702 moratorium in accordance with the provisions of this subsection prior
703 to, as well as after, such regulations are adopted.

704 (m) The commissioner shall, pursuant to regulations adopted in
705 accordance with the provisions of chapter 54, promulgate model deed
706 restrictions which satisfy the requirements of this section. A
707 municipality may waive any fee which would otherwise be required
708 for the filing of any long-term affordability deed restriction on the land
709 records.

710 Sec. 3. Subdivision (12) of section 8-13m of the general statutes, as
711 amended by this act, is repealed and the following is substituted in
712 lieu thereof (*Effective October 1, 2015, and applicable to any final*
713 *determination of eligibility for an incentive housing zone or any grant that*
714 *has not yet been approved under section 8-13x of the general statutes as of*
715 *October 1, 2015*):

716 (12) "Median income" means, after adjustments for household size,
717 the lessor of the state median income or the area median income as
718 determined by the United States Department of Housing and Urban
719 Development for the municipality in which an approved incentive
720 housing zone or development is located.

721 Sec. 4. Subdivision (12) of section 8-13m of the general statutes is
722 repealed and the following is substituted in lieu thereof (*Effective*
723 *October 1, 2020, and applicable to any final determination of eligibility for an*
724 *incentive housing zone or any grant that has not yet been approved under*
725 *section 8-13x of the general statutes as of October 1, 2020*):

726 (12) "Median income" means, after adjustments for household size,
727 [the lessor of the state median income or] the area median income as
728 determined by the United States Department of Housing and Urban
729 Development for the municipality in which an approved incentive
730 housing zone or development is located."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015</i>	8-30g
Sec. 2	<i>October 1, 2020</i>	8-30g
Sec. 3	<i>October 1, 2015, and applicable to any final determination of eligibility for an incentive housing zone or any grant that has not yet been approved under section 8-13x of the general statutes as of October 1, 2015</i>	8-13m(12)
Sec. 4	<i>October 1, 2020, and applicable to any final determination of eligibility for an incentive housing zone or any grant that has not yet been approved under section 8-13x of the general statutes as of October 1, 2020</i>	8-13m(12)