



General Assembly

**Amendment**

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LCO No. 8945



Offered by:

REP. FRANCE, 42<sup>nd</sup> Dist.

REP. KUPCHICK, 132<sup>nd</sup> Dist.

To: Senate Bill No. 892

File No. 34

Cal. No. 513

**"AN ACT CONCERNING HOUSING DEVELOPMENTS WITHIN INCENTIVE HOUSING ZONES."**

1 After the last section, add the following and renumber sections and  
2 internal references accordingly:

3 "Sec. 501. "Sec. 501. Section 8-30g of the general statutes is repealed  
4 and the following is substituted in lieu thereof (*Effective October 1,*  
5 *2015*):

6 (a) As used in this section:

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

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

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

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

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

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

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

45 Department of Housing and Urban Development; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

211 subdivisions (1) to (4), inclusive, of this subsection, has not been  
212 converted from age-restricted housing to affordable housing. The  
213 municipalities meeting the criteria set forth in this subsection shall be  
214 listed in the report submitted under section 8-37qqq. As used in this  
215 subsection, "accessory apartment" means a separate living unit that (A)  
216 is attached to the main living unit of a house, which house has the  
217 external appearance of a single-family residence, (B) has a full kitchen,  
218 (C) has a square footage that is not more than thirty per cent of the  
219 total square footage of the house, (D) has an internal doorway  
220 connecting to the main living unit of the house, (E) is not billed  
221 separately from such main living unit for utilities, and (F) complies  
222 with the building code and health and safety regulations.

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

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

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

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

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

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

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

284 (6) For purposes of this subsection, housing unit-equivalent points  
285 shall be determined by the commissioner as follows: (A) No points  
286 shall be awarded for a unit unless its occupancy is restricted to persons  
287 and families whose income is equal to or less than eighty per cent of  
288 median income, except that unrestricted units in a set-aside  
289 development shall be awarded one-fourth point each. (B) Family units  
290 restricted to persons and families whose income is equal to or less than  
291 eighty per cent of median income shall be awarded one point if an  
292 ownership unit and one and one-half points if a rental unit. (C) Family  
293 units restricted to persons and families whose income is equal to or  
294 less than sixty per cent of median income shall be awarded one and  
295 one-half points if an ownership unit and two points if a rental unit. (D)  
296 Family units restricted to persons and families whose income is equal  
297 to or less than forty per cent of median income shall be awarded two  
298 points if an ownership unit and two and one-half points if a rental  
299 unit. (E) Elderly units restricted to persons and families whose income  
300 is equal to or less than eighty per cent of median income shall be  
301 awarded one-half point. (F) A set-aside development containing family  
302 units which are rental units shall be awarded additional points equal  
303 to twenty-two per cent of the total points awarded to such  
304 development, provided the application for such development was filed  
305 with the commission prior to July 6, 1995.

306 (7) Points shall be awarded only for dwelling units which were (A)  
307 newly-constructed units in an affordable housing development, as that  
308 term was defined at the time of the affordable housing application, for  
309 which a certificate of occupancy was issued after July 1, 1990, or (B)  
310 newly subjected after July 1, 1990, to deeds containing covenants or

311 restrictions which require that, for at least the duration required by  
312 subsection (a) of this section for set-aside developments on the date  
313 when such covenants or restrictions took effect, such dwelling units  
314 shall be sold or rented at, or below, prices which will preserve the  
315 units as affordable housing for persons or families whose income does  
316 not exceed eighty per cent of median income.

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

322 (9) A newly-constructed unit shall be counted toward a moratorium  
323 when it receives a certificate of occupancy. A newly-restricted unit  
324 shall be counted toward a moratorium when its deed restriction takes  
325 effect.

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

332 (11) The commissioner shall, within available appropriations, adopt  
333 regulations in accordance with chapter 54 to carry out the purposes of  
334 this subsection. Such regulations shall specify the procedure to be  
335 followed by a municipality to obtain a moratorium, and shall include  
336 the manner in which a municipality is to document the units to be  
337 counted toward a moratorium. A municipality may apply for a  
338 moratorium in accordance with the provisions of this subsection prior  
339 to, as well as after, such regulations are adopted.

340 (m) The commissioner shall, pursuant to regulations adopted in  
341 accordance with the provisions of chapter 54, promulgate model deed

342 restrictions which satisfy the requirements of this section. A  
343 municipality may waive any fee which would otherwise be required  
344 for the filing of any long-term affordability deed restriction on the land  
345 records."

This act shall take effect as follows and shall amend the following sections:		
Sec. 501	<i>October 1, 2015</i>	New section