



General Assembly

January Session, 2017

Raised Bill No. 7057

LCO No. 3812



Referred to Committee on HOUSING

Introduced by:
(HSG)

AN ACT CONCERNING AFFORDABLE HOUSING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 8-30g of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2017*):

3 (a) As used in this section and section 2 of this act:

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

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

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

15 United States Code;

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

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

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

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

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

44 (b) (1) Any person filing an affordable housing application with a

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

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

71 (c) Any commission, by regulation, may require that an affordable
72 housing application seeking a change of zone [shall] include the
73 submission of a conceptual site plan describing the proposed
74 development's total number of residential units and their arrangement
75 on the property and the proposed development's roads and traffic
76 circulation, sewage disposal and water supply. Any commission, by
77 regulation, may adopt specific design guidelines for affordable

78 housing applications, including, but not limited to, setback
79 requirements relevant to the existing structures within the
80 neighborhood context.

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

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

104 (f) [Any] Except as provided in subsections (k) and (l) of this section,
105 any person whose affordable housing application is denied, or is
106 approved with restrictions which have a substantial adverse impact on
107 the viability of the affordable housing development or the degree of
108 affordability of the affordable dwelling units in a set-aside
109 development, may appeal such decision pursuant to the procedures of

110 this section. Such appeal shall be filed within the time period for filing
111 appeals as set forth in section 8-8, 8-9, 8-28 or 8-30a, as applicable, and
112 shall be made returnable to the superior court for the judicial district
113 where the real property which is the subject of the application is
114 located. Affordable housing appeals, including pretrial motions, shall
115 be heard by a judge assigned by the Chief Court Administrator to hear
116 such appeals. To the extent practicable, efforts shall be made to assign
117 such cases to a small number of judges, sitting in geographically
118 diverse parts of the state, so that a consistent body of expertise can be
119 developed. Unless otherwise ordered by the Chief Court
120 Administrator, such appeals, including pretrial motions, shall be heard
121 by such assigned judges in the judicial district in which such judge is
122 sitting. Appeals taken pursuant to this subsection shall be privileged
123 cases to be heard by the court as soon after the return day as is
124 practicable. Except as otherwise provided in this section, appeals
125 involving an affordable housing application shall proceed in
126 conformance with the provisions of [said] section 8-8, 8-9, 8-28 or 8-
127 30a, as applicable.

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

143 assisted housing, as defined in subsection (a) of this section. If the
144 commission does not satisfy its burden of proof under this subsection,
145 the court shall wholly or partly revise, modify, remand or reverse the
146 decision from which the appeal was taken in a manner consistent with
147 the evidence in the record before it.

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

176 render a decision within said sixty-five days or subsequent extension
177 period permitted by this subsection shall constitute a rejection of the
178 proposed modification. Within the time period for filing an appeal on
179 the proposed modification as set forth in section 8-8, 8-9, 8-28 or 8-30a,
180 as applicable, the applicant may appeal the commission's decision on
181 the original application and the proposed modification in the manner
182 set forth in this section. Nothing in this subsection shall be construed
183 to limit the right of an applicant to appeal the original decision of the
184 commission in the manner set forth in this section without submitting
185 a proposed modification or to limit the issues which may be raised in
186 any appeal under this section.

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

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

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

208 restrictions which require that such dwelling units be sold or rented at,
209 or below, prices which will preserve the units as housing for which, for
210 a period of not less than ten years, persons and families pay thirty per
211 cent or less of income, where such income is less than or equal to
212 eighty per cent of the median income. The municipalities meeting the
213 criteria set forth in this subsection shall be listed in the report
214 submitted under section 8-37qqq. As used in this subsection,
215 "accessory apartment" means a separate living unit that (A) is attached
216 to the main living unit of a house, which house has the external
217 appearance of a single-family residence, (B) has a full kitchen, (C) has a
218 square footage that is not more than thirty per cent of the total square
219 footage of the house, (D) has an internal doorway connecting to the
220 main living unit of the house, (E) is not billed separately from such
221 main living unit for utilities, and (F) complies with the building code
222 and health and safety regulations.

223 (l) (1) [Notwithstanding the provisions of subsections (a) to (j),
224 inclusive, of this section,] Except as provided in subdivision (2) of this
225 subsection, the affordable housing appeals procedure established
226 under this section shall not be applicable to an affordable housing
227 application filed with a commission during a moratorium, which shall
228 be the four-year period [after] commencing when (A) a certification of
229 affordable housing project completion issued by the commissioner is
230 published in the Connecticut Law Journal, or (B) [after] notice of a
231 provisional approval is published pursuant to subdivision (4) of this
232 subsection. Any moratorium that is in effect on October 1, 2002, is
233 extended by one year.

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

241 commission pursuant to this section prior to the date upon which the
242 moratorium takes effect.

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

245 (4) (A) The commissioner shall issue a certificate of affordable
246 housing project completion for the purposes of this subsection upon
247 finding that there has been completed within the municipality one or
248 more affordable housing developments which create housing unit-
249 equivalent points equal to (i) the greater of two per cent of all dwelling
250 units in the municipality, as reported in the most recent United States
251 decennial census, or seventy-five housing unit-equivalent points, or (ii)
252 for any municipality that has adopted an affordable housing plan in
253 accordance with section 2 of this act, the greater of one and one-half
254 per cent of all dwelling units in the municipality, as reported in the
255 most recent United States decennial census, or fifty housing unit-
256 equivalent points.

257 (B) A municipality may apply for a certificate of affordable housing
258 project completion pursuant to this subsection by applying in writing
259 to the commissioner, and including documentation showing that the
260 municipality has accumulated the required number of points within
261 the applicable time period. Such documentation shall include the
262 location of each dwelling unit being counted, the number of points
263 each dwelling unit has been assigned, and the reason, pursuant to this
264 subsection, for assigning such points to such dwelling unit. Upon
265 receipt of such application, the commissioner shall promptly cause a
266 notice of the filing of the application to be published in the Connecticut
267 Law Journal, stating that public comment on such application shall be
268 accepted by the commissioner for a period of thirty days after the
269 publication of such notice. Not later than ninety days after the receipt
270 of such application, the commissioner shall either approve or reject
271 such application. Such approval or rejection shall be accompanied by a
272 written statement of the reasons for approval or rejection, pursuant to

273 the provisions of this subsection. If the application is approved, the
274 commissioner shall promptly cause a certificate of affordable housing
275 project completion to be published in the Connecticut Law Journal. If
276 the commissioner fails to either approve or reject the application
277 within such ninety-day period, such application shall be deemed
278 provisionally approved, and the municipality may cause notice of such
279 provisional approval to be published in a conspicuous manner in a
280 daily newspaper having general circulation in the municipality, in
281 which case, such moratorium shall take effect upon such publication.
282 The municipality shall send a copy of such notice to the commissioner.
283 Such provisional approval shall remain in effect unless the
284 commissioner subsequently acts upon and rejects the application, in
285 which case the moratorium shall terminate upon notice to the
286 municipality by the commissioner.

287 (5) For the purposes of this subsection, "elderly units" are dwelling
288 units whose occupancy is restricted by age, [and] "family units" are
289 dwelling units whose occupancy is not restricted by age and "mobile
290 manufactured home" means a unit located in a resident-owned mobile
291 manufactured home park consisting of land that is deed restricted at
292 the time of issuance of a loan for the purchase of such land where such
293 loan requires (A) seventy-five per cent of units to be set aside for
294 persons with incomes equal to or less than eighty per cent of median
295 income, and (B) forty per cent of said seventy-five per cent to be set
296 aside for persons with incomes equal to or less than sixty per cent of
297 median income.

298 (6) For the purposes of this subsection, housing unit-equivalent
299 points shall be determined by the commissioner as follows: (A) No
300 points shall be awarded for a unit unless its occupancy is restricted to
301 persons and families whose income is equal to or less than eighty per
302 cent of median income, except that unrestricted units in a set-aside
303 development shall be awarded one-fourth point each. (B) Family units
304 restricted to persons and families whose income is equal to or less than
305 eighty per cent of median income shall be awarded one point if an

306 ownership unit and one and one-half points if a rental unit. (C) Family
307 units restricted to persons and families whose income is equal to or
308 less than sixty per cent of median income shall be awarded one and
309 one-half points if an ownership unit and two points if a rental unit. (D)
310 Family units restricted to persons and families whose income is equal
311 to or less than forty per cent of median income shall be awarded two
312 points if an ownership unit and two and one-half points if a rental
313 unit. (E) Restricted family units containing at least three bedrooms
314 shall be awarded an additional one-fourth point. (F) Elderly units
315 restricted to persons and families whose income is equal to or less than
316 eighty per cent of median income shall be awarded one-half point. [(F)]
317 (G) If at least fifty per cent of the total restricted units submitted by a
318 municipality as part of an application for a certificate of affordable
319 housing project completion are family units, any elderly units
320 submitted within such application shall be awarded an additional one-
321 fourth point. (H) Restricted family units located within an approved
322 incentive housing development, as defined in section 8-13m, as
323 amended by this act, shall be awarded an additional one-fourth point.
324 (I) A set-aside development containing family units which are rental
325 units shall be awarded additional points equal to twenty-two per cent
326 of the total points awarded to such development, provided the
327 application for such development was filed with the commission prior
328 to July 6, 1995. (J) A mobile manufactured home shall be awarded
329 points as follows: One and one-half points shall be awarded where a
330 mobile manufactured home is occupied by persons and families with
331 an income equal to or less than eighty per cent of the median income;
332 two points shall be awarded when a mobile manufactured home is
333 occupied by persons and families with an income equal to or less than
334 sixty per cent of the median income; and one-fourth point shall be
335 awarded for the remaining units.

336 (7) Points shall be awarded only for dwelling units which were (A)
337 newly-constructed units in an affordable housing development, as that
338 term was defined at the time of the affordable housing application, for

339 which a certificate of occupancy was issued after July 1, 1990, or (B)
340 newly subjected after July 1, 1990, to deeds containing covenants or
341 restrictions which require that, for at least the duration required by
342 subsection (a) of this section for set-aside developments on the date
343 when such covenants or restrictions took effect, such dwelling units
344 shall be sold or rented at, or below, prices which will preserve the
345 units as affordable housing for persons or families whose income does
346 not exceed eighty per cent of median income, (C) located within an
347 approved incentive housing development, as defined in section 8-13m,
348 as amended by this act, or (D) located on land in a resident-owned
349 mobile manufactured home park that contains mobile manufactured
350 homes.

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

356 (9) A newly-constructed unit shall be counted toward a moratorium
357 when it receives a certificate of occupancy. A newly-restricted unit
358 shall be counted toward a moratorium when its deed restriction takes
359 effect.

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

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

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

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

380 Sec. 2. (NEW) (*Effective October 1, 2017*) (a) At least once every four
381 years, each municipality shall prepare or amend and adopt an
382 affordable housing plan for the municipality. Such plan shall specify
383 how the municipality intends to increase the number of affordable
384 housing developments in the municipality and shall include, but need
385 not be limited to, inclusionary zoning, as defined in section 8-2i of the
386 general statutes.

387 (b) The municipality may hold public informational meetings or
388 organize other activities to inform residents about the process of
389 preparing the plan. If the municipality holds a public hearing, at least
390 thirty-five days prior to the public hearing on the adoption, the
391 municipality shall file in the office of the town clerk of such
392 municipality a copy of such draft plan or any amendments to the plan,
393 and if applicable, post such draft plan on the Internet web site of the
394 municipality. After adoption of the plan, the municipality shall file the
395 final plan in the office of the town clerk of such municipality and, if
396 applicable, post the plan on the Internet web site of the municipality.

397 (c) Following adoption, the municipality shall regularly review and
398 maintain such plan. The municipality may adopt such geographical,
399 functional or other amendments to the plan or parts of the plan, in
400 accordance with the provisions of this section, as it deems necessary. If

401 the plan is not amended every five years, the chief elected official of
 402 the municipality shall submit a letter to the Commissioner of Housing
 403 that explains why such plan was not amended.

404 Sec. 3. Subdivision (12) of section 8-13m of the general statutes is
 405 repealed and the following is substituted in lieu thereof (*Effective*
 406 *October 1, 2017, and applicable to any final determination of eligibility for an*
 407 *incentive housing zone or grant that has not yet been approved under section*
 408 *8-13x of the general statutes as of October 1, 2017*):

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2017</i>	8-30g
Sec. 2	<i>October 1, 2017</i>	New section
Sec. 3	<i>October 1, 2017, and applicable to any final determination of eligibility for an incentive housing zone or grant that has not yet been approved under section 8-13x of the general statutes as of October 1, 2017</i>	8-13m(12)

Statement of Purpose:

To amend the affordable housing appeals procedure under section 8-30g of the general statutes.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]