



*Making Great Communities Happen*

## **Connecticut Chapter of the American Planning Association**

**Testimony regarding**

**Proposed H.B. No. 6749-- AN ACT ESTABLISHING ACCOUNTABILITY FOR FAIR AND AFFORDABLE HOUSING THROUGH ZONING REGULATIONS**

CCAPA supports the purpose and intent of this bill, but recommends several key changes to achieve the aim of accountability. The proposed bill succeeds in adding some critical organization and clarifying grammar to CGS §8-2, which has been awkwardly written. It also, admirably, increases the focus on municipal responsibility to affirmatively further fair housing and incorporates a potential financial consequence for municipalities that fail to meet their relatively new requirement (per PA 17-170) of producing a five-year “affordable housing plan.” This bill, however, lacks some key elements as well as shared responsibility from the State entities overseeing this requirement.

This proposed bill is a product of the Fair Housing Working Group, a board co-chaired by Representative Lemar and Commissioner Klein. CCAPA served on this group, and worked extensively to ensure that proposed legislation balances its requirements for municipalities with guidance and support from the Department of Housing. Specifically, there is currently no standard provided, either in Statute or in existing DOH or OPM policies, that municipalities can use to gauge whether their zoning regulations are sufficient or what elements must be included in an affordable housing plan. Municipalities are asked to meet a benchmark that has not been set; one that has no clear monitoring or assessment by the State, nor an appeals process. The bill should be amended to provide for that standard.

Working with members of the Fair Housing Working Group, CCAPA has developed and respectfully submits the attached amendment to the proposed bill. This amendment takes the base language and structure provided by Rep. Lemar and adds the following elements:

- Requires the Commissioner of Housing to develop, in consultation with a working group of experts, a set of standards that zoning regulations must meet to affirmatively further fair housing, as well as establishing standards for the content and format of the affordable housing plans as required by PA 17-170;
- Requires these standards to be in place no later than January 1, 2020, and by April 1, 2020, guidance must be given to municipalities as to the deficiencies in their zoning regulations relative to these standards;
- Requires all municipalities to develop affordable housing plans in compliance with these standards no later than January 1, 2021; and
- Changes the update cycle of these plans, following the initial requirement date of January, 2021, to a ten-year cycle which may be accomplished concurrently with the existing Plan of Conservation & Development requirement of §8-23.

CCAPA believes that this amendment would provide the guidance necessary to ensure that Connecticut's municipalities are meeting their existing and proposed statutory responsibilities, as well as ensuring that the State is an active participant in this process to both assist municipalities and hold them accountable. The timeline ensures that these requirements will proceed swiftly, and allows municipalities to incorporate housing in a more thoughtful and comprehensive way into their local plans.

CCAPA remains committed to active advocacy, at all levels of government and in the private sector, for the expansion of housing opportunities and furtherance of fair housing in Connecticut. We believe that this bill, with amendments as proposed, will continue the State's progress toward that goal. We stand ready to continue to be a resource to the legislature in this ongoing effort.

***Attachment: Proposed amendments to HB 6749***

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**WHO WE ARE**

The Connecticut Chapter of the American Planning Association (CCAPA) has over 420 members who are governmental and consulting planners, land use attorneys, citizen planners, and other professionals engaged in planning and managing land use, economic development, housing, transportation, and conservation for local, regional, and State governments, private businesses and other entities. CCAPA has long been committed to assisting the legislature and State agencies with developing and furthering responsible growth management principles. The APA is an independent, not-for-profit, national educational organization that provides leadership in the development of vital communities.

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**AN ACT ESTABLISHING ACCOUNTABILITY FOR FAIR AND AFFORDABLE HOUSING THROUGH ZONING REGULATIONS.**

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

Section 1. Section 8-2 of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2019*):

(a) (1) The zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality: [,] (A) [the] The height, number of stories and size of buildings and other structures; (B) the percentage of the area of the lot that may be occupied; (C) the size of yards, courts and other open spaces; (D) the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes, including water-dependent uses, as defined in section 22a-93; [,] and (E) the height, size and location of advertising signs and billboards. [Such bulk regulations may allow for cluster development, as defined in section 8-18.]

(2) Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All [such] zoning regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district, but the regulations in one district may differ from those in another district. [, and]

(3) Zoning regulations may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit or special exception from a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, whichever commission or board the regulations may, notwithstanding any special act to the contrary, designate, subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values. [Such]

(b) Zoning regulations adopted pursuant to subsection (a) of this section shall: [be]

(1) Be made in accordance with a comprehensive plan and in [adopting such regulations the commission shall consider] consideration of the plan of conservation and development [prepared] adopted under section 8-23; [. Such regulations shall be]

(2) Be designed to (A) lessen congestion in the streets; [to] (B) secure safety from fire, panic, flood and other dangers; [to] (C) promote health and the general welfare; [to] (D) provide adequate light and air; [to] (E) prevent the overcrowding of land; [to] (F) avoid undue concentration of population; [and to] (G) facilitate the adequate provision for transportation,

water, sewerage, schools, parks and other public requirements; [. Such regulations shall be] and (H) affirmatively further fair housing;

(3) Be made with reasonable consideration as to [the character of the district and its peculiar] a district's suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout [such] a municipality; [. Such regulations may, to the extent consistent with soil types, terrain, infrastructure capacity and the plan of conservation and development for the community, provide for cluster development, as defined in section 8-18, in residential zones. Such regulations shall also encourage]

(4) Provide for the development of housing opportunities, including opportunities for multifamily dwellings, consistent with soil types, terrain and infrastructure capacity, for all residents of the municipality and the planning region in which the municipality is located, as designated by the Secretary of the Office of Policy and Management under section 16a-4a; [. Such regulations shall also promote]

(5) Promote housing choice and economic diversity in housing, including housing for both low and moderate income households; [, and shall encourage]

(6) Provide for the development of housing which will meet the housing needs identified in the state's consolidated plan for housing and community development prepared pursuant to section 8-37t and in the housing component and the other components of the state plan of conservation and development prepared pursuant to section 16a-26; [. Zoning regulations shall be]

(7) Be made with reasonable consideration for their impact on agriculture, as defined in subsection (q) of section 1-1; [.]

(8) Provide that proper provision be made for soil erosion and sediment control pursuant to section 22a-329;

(9) Be made with reasonable consideration for the protection of existing and potential public surface and ground drinking water supplies; and

(10) In any municipality that is contiguous to Long Island Sound, (A) be made with reasonable consideration for the restoration and protection of the ecosystem and habitat of Long Island Sound; (B) be designed to reduce hypoxia, pathogens, toxic contaminants and floatable debris in Long Island Sound; and (C) provide that the commission consider the environmental impact on Long Island Sound of any proposal for development.

(c) Zoning regulations adopted pursuant to subsection (a) of this section may: [be]

(1) To the extent consistent with soil types, terrain, and infrastructure capacity for the community, provide for cluster development, as defined in section 8-18;

(2) Be made with reasonable consideration for the protection of historic factors; [and shall be made with reasonable consideration for the protection of existing and potential public surface and ground drinking water supplies. On and after July 1, 1985, the regulations shall provide

that proper provision be made for soil erosion and sediment control pursuant to section 22a-329. Such regulations may also encourage]

(3) Encourage energy-efficient patterns of development, the use of solar and other renewable forms of energy, and energy conservation; [. The regulations may also provide]

(4) Provide for incentives for developers who use passive solar energy techniques, as defined in subsection (b) of section 8-25, in planning a residential subdivision development, [. The incentives may include, but not be] including, but not limited to, cluster development, higher density development and performance standards for roads, sidewalks and underground facilities in the subdivision; [. Such regulations may provide]

(5) Provide for a municipal system for the creation of development rights and the permanent transfer of such development rights, which may include a system for the variance of density limits in connection with any such transfer; [. Such regulations may also provide]

(6) Provide for notice requirements in addition to those required by this chapter; [. Such regulations may provide]

(7) Provide for conditions on operations to collect spring water or well water, as defined in section 21a-150, including the time, place and manner of such operations; [. No such regulations shall prohibit] and

(8) In any municipality where a traprock ridge, as defined in section 8-1aa, or an amphibolite ridge, as defined in section 8-1aa, is located, (A) provide for development restrictions in ridgeline setback areas, as defined in section 8-1aa; and (B) restrict quarrying and clear cutting, except that the following operations and uses shall be permitted in ridgeline setback areas, as of right: (i) Emergency work necessary to protect life and property; (ii) any nonconforming uses that were in existence and that were approved on or before the effective date of regulations adopted pursuant to this section; and (iii) selective timbering, grazing of domesticated animals and passive recreation.

(d) Zoning regulations adopted pursuant to subsection (a) of this section shall not:

(1) Prohibit the operation of any family child care home or group child care home in a residential zone; [. No such regulations shall prohibit]

(2) (A) Prohibit the use of receptacles for the storage of items designated for recycling in accordance with section 22a-241b or require that such receptacles comply with provisions for bulk or lot area, or similar provisions, except provisions for side yards, rear yards and front yards; [. No such regulations shall] or (B) unreasonably restrict access to or the size of such receptacles for businesses, given the nature of the business and the volume of items designated for recycling in accordance with section 22a-241b, that such business produces in its normal course of business, provided nothing in this section shall be construed to prohibit such regulations from requiring the screening or buffering of such receptacles for aesthetic reasons; [. Such regulations shall not impose]

(3) Impose conditions and requirements on manufactured homes, including mobile manufactured homes, having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards, or on lots

containing such manufactured homes, [which] including mobile manufactured home parks, if those conditions and requirements are substantially different from conditions and requirements imposed on (A) single-family dwellings; [and] (B) lots containing single-family dwellings; [. Such regulations shall not impose conditions and requirements on developments to be occupied by manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards which are substantially different from conditions and requirements imposed on] or (C) multifamily dwellings, lots containing multifamily dwellings, cluster developments or planned unit developments; [. Such regulations shall not prohibit]

(4) (A) Prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations; [. Such regulations shall not] (B) provide for the termination of any nonconforming use solely as a result of nonuse for a specified period of time without regard to the intent of the property owner to maintain that use; [. Such regulations shall not] or (C) terminate or deem abandoned a nonconforming use, building or structure unless the property owner of such use, building or structure voluntarily discontinues such use, building or structure and such discontinuance is accompanied by an intent to not reestablish such use, building or structure. The demolition or deconstruction of a nonconforming use, building or structure shall not by itself be evidence of such property owner's intent to not reestablish such use, building or structure; [. Unless such town opts out, in accordance with the provisions of subsection (j) of section 8-1bb, such regulations shall not prohibit] and

(5) Prohibit the installation of temporary health care structures for use by mentally or physically impaired persons [in accordance with the provisions of section 8-1bb if such structures comply with the provisions of said section] pursuant to section 8-1bb, unless the municipality opts out pursuant to subsection (j) of section 8-1bb, as amended by this act.

(e) Any city, town or borough which adopts the provisions of this chapter may, by vote of its legislative body, exempt municipal property from the regulations prescribed by the zoning commission of such city, town or borough, [;] but unless it is so voted, municipal property shall be subject to such regulations.

[(b) In any municipality that is contiguous to Long Island Sound the regulations adopted under this section shall be made with reasonable consideration for restoration and protection of the ecosystem and habitat of Long Island Sound and shall be designed to reduce hypoxia, pathogens, toxic contaminants and floatable debris in Long Island Sound. Such regulations shall provide that the commission consider the environmental impact on Long Island Sound of any proposal for development.

(c) In any municipality where a traprock ridge, as defined in section 8-1aa, or an amphibolite ridge, as defined in section 8-1aa, is located the regulations may provide for development restrictions in ridgeline setback areas, as defined in said section. The regulations may restrict quarrying and clear cutting, except that the following operations and uses shall be permitted in ridgeline setback areas, as of right: (1) Emergency work necessary to protect life and property; (2) any nonconforming uses that were in existence and that were approved on or

before the effective date of regulations adopted under this section; and (3) selective timbering, grazing of domesticated animals and passive recreation.]

Sec. 2. Subsection (j) of section 8-1bb of the 2018 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2019*):

(j) A municipality, by vote of its legislative body or, in a municipality where the legislative body is a town meeting, by vote of the board of selectmen, may opt out of the provisions of this section and the provision of subdivision (5) of subsection [(a)] (d) of section 8-2, as amended by this act, regarding authorization for the installation of temporary health care structures, provided the zoning commission or combined planning and zoning commission of the municipality: (1) First holds a public hearing in accordance with the provisions of section 8-7d on such proposed opt-out, (2) affirmatively decides to opt out of the provisions of said sections within the period of time permitted under section 8-7d, (3) states upon its records the reasons for such decision, and (4) publishes notice of such decision in a newspaper having a substantial circulation in the municipality not later than fifteen days after such decision has been rendered.

Section 3. (NEW) (*Effective July 1, 2019*):

(a) (1) The Commissioner of Housing shall convene a work group to study the obligation for municipal zoning requirements to: (A) Provide for the development of housing opportunities, including opportunities for multifamily dwellings, consistent with soil types, terrain and infrastructure capacity, for all residents of the municipality and the planning region in which the municipality is located, as designated by the Secretary of the Office of Policy and Management under section 16a-4a; (B) Promote housing choice and economic diversity in housing, including housing for both low and moderate income households; and (C) Provide for the development of housing which will meet the housing needs identified in the state's consolidated plan for housing and community development prepared pursuant to section 8-37t and in the housing component and the other components of the state plan of conservation and development prepared pursuant to section 16a-26. Such study shall include an examination of (A) how the commissioner should determine municipal compliance with such zoning requirements, (B) the form and manner in which evidence of compliance should be provided to the commissioner and (C) how municipal compliance with such zoning requirements should be incorporated into the affordable housing plans prepared pursuant to section 8-30j.

(2) The working group shall consist of the following members, who shall be appointed by the Commissioner of Housing not later than sixty days after the effective date of this section: (A) two representatives with expertise in fair housing issues; (B) two representatives with expertise in state or local planning; (C) two representatives with expertise in addressing homelessness in the state; (D) one representative of a municipal advocacy organization; (E) one representative with expertise in the housing construction trade; and (F) the Secretary of the Office of Policy and Management, or such secretary's designee.

(3) Not later than January 1, 2020, the Commissioner of Housing shall report, in accordance with the provisions of 11-4a of the general statutes, regarding the outcome and

recommendations of the working group, to the joint standing committee of the General Assembly having cognizance of matters relating to planning and development.

(c) (1) Not later than January 1, 2021, and at least once every ten years thereafter, each municipality that adopts the provisions of chapter 124 pursuant to section 8-1 shall demonstrate compliance with subdivisions (4) to (6), inclusive, of subsection (b) of section 8-2, as amended by this act. Such municipalities shall provide evidence of compliance in a form and manner prescribed by the Commissioner of Housing, in consultation with the workgroup established pursuant to subsection (a) of this section. Not later than April 1, 2020, the Commissioner of Housing shall provide guidance to municipalities regarding the demonstration of compliance.

(2) The commissioner shall notify the Secretary of the Office of Policy and Management of the failure of any municipality to demonstrate compliance. A municipality that fails to demonstrate such compliance shall be ineligible for discretionary state funding until the commissioner notifies the secretary that the municipality has satisfied the requirements, unless such ineligibility is expressly waived by the secretary.

Section 4. Section 8-30j of the 2018 supplement to the general statutes is repealed and the following is inserted in lieu thereof (*Effective July 1, 2019*):

(a) At least once every **ten** years, each municipality shall prepare or amend and adopt an affordable housing plan for the municipality. Such plan shall specify (1) how the municipality intends to increase the number of affordable housing developments in the municipality and (2) on or after January 1, 2021, the municipality's demonstration of compliance with subdivisions (4) to (6), inclusive, of subsection (b) of section 8-2, as amended by this act.

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

(c) Following adoption, the municipality shall regularly review and maintain such plan, **which may be updated concurrently with the local Plan of Conservation & Development pursuant to section 8-23.** The municipality may adopt such geographical, functional or other amendments to the plan or parts of the plan, in accordance with the provisions of this section, as it deems necessary. If the municipality fails to amend such plan every five years, the chief elected official of the municipality shall submit a letter to the Commissioner of Housing that explains why such plan was not amended.