
OLR Bill Analysis

sSB 1024

AN ACT CONCERNING ZONING AUTHORITY, CERTAIN DESIGN GUIDELINES, QUALIFICATIONS OF ZONING ENFORCEMENT OFFICERS AND CERTAIN SEWAGE DISPOSAL SYSTEMS.

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Beginning January 1, 2023, requires all appointed ZEOs to obtain and maintain certification from the state’s professional ZEO association

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Expands DPH’s authority over alternative on-site sewage treatment systems to include those with a daily capacity of up to 7,500 gallons, instead of up to 5,000 gallons; shifts, from DEEP to DPH, authority over subsurface community sewage systems with a daily capacity of up to 7,500 gallons; and includes accessory apartments as part of the larger main residence for determining the presence of a community sewage system

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Adds information about sewer system capacity for certain areas to municipal water pollution control plans and requires copies of these plans to be filed with the DOH commissioner in addition to the DEEP commissioner

BACKGROUND

Information on the Affordable Housing Land Use Appeals Procedure and related bills

§§ 1, 5 & 6 — AS OF RIGHT ACCESSORY APARTMENTS

Requires municipalities that zone under CGS § 8-2 to adopt or amend regulations to allow ADUs as of right on the same lot as single-family homes; specifies that these units will not count toward a municipality’s base housing stock calculation, for purposes of the Affordable Housing Land Use Appeals Procedure (CGS § 8-30g); modifies the definition of ADU for purposes of the appeals procedure

Definitions

Under the bill, an “accessory apartment” (also referred to as an accessory dwelling unit or “ADU”) means a separate dwelling unit occupied by a family or a single housekeeping unit that (1) is located on the same lot as a principal dwelling unit of greater square footage; (2) has cooking facilities; and (3) complies with or is otherwise exempt from any applicable building code, fire code, and health and safety regulations.

The bill specifies that “as of right” means able to be approved without requiring a public hearing; a variance, special permit, or special exception; or other discretionary zoning action, other than a determination that a site plan conforms with applicable zoning

regulations.

Regulation Adoption Requirement

The bill requires municipalities that exercise powers under CGS § 8-2 (the Zoning Enabling Act) to adopt regulations (1) allowing one ADU as of right on each lot that contains a single-family dwelling and (2) designating other areas where ADUs are allowed. The bill specifies that municipalities cannot require as of right ADUs sharing a lot with a single-family home to be preserved for lower-income families.

The bill requires municipalities to amend or adopt ADU zoning regulations by June 1, 2022, and specifies that those that do not must review ADU permit applications in accordance with the bill's regulation requirements until the regulations are amended or adopted. A municipality may not use or impose additional standards beyond those set forth in the bill. The bill deems noncompliant regulations to be null and void.

As of Right Permitting

The bill requires regulations to establish an as of right permit application and review process for ADUs. The process must require the zoning or planning and zoning commission to decide within 65 days after application, unless an applicant approves an extension or extensions of up to 65 days total or withdraws the application.

Under the bill, municipalities cannot condition ADU approval on the correction of a nonconforming use, structure, or lot or require fire sprinklers unless they are also required in the principal dwelling or by the fire code.

Regulation Contents

Under the bill, the ADU zoning regulations must:

1. allow attached and detached ADUs and ADUs contained within the principal dwelling unit;
2. set a maximum net floor area for ADUs that is the lesser of (a) at least 30% of the principal dwelling's net floor area or (b) 1,000

square feet (but regulations may allow a larger net floor area for ADUs);

3. require setbacks, lot size, and building frontage less than or equal to that which is required for the principal dwelling;
4. require lot coverage greater than or equal to that which is required for the principal dwelling; and
5. provide for height, landscaping, and architectural design standards that do not exceed standards applied to single-family dwellings in the municipality.

Regulations cannot require:

1. a passageway between the ADU and principal dwelling;
2. an exterior door for an ADU, except as required by the applicable building or fire code;
3. more than one parking space for the ADU or fees in lieu of parking;
4. a familial, marital, or employment relationship between the principal dwelling unit's occupants and the ADU's occupants;
5. a minimum age for ADU occupants;
6. separate billing of utilities otherwise connected to, or used by, the principal dwelling unit; or
7. periodic ADU permit renewal.

The bill further specifies that it does not supersede applicable building code requirements or other requirements where a private sewerage system is being used, provided approval for any such accessory apartment shall not be unreasonably withheld.

Additionally, the bill prohibits municipalities, special districts, and sewer or water authorities from (1) considering an ADU to be a new

residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the ADU was constructed with a new single-family dwelling on the same lot or (2) requiring the installation of a new or separate utility connection directly to an ADU or imposing a related connection fee or capacity charge.

The bill does not prevent municipalities from (1) requiring ADUs be owner-occupied or (2) prohibiting or limiting the use of ADUs for short-term rentals or vacation stays.

Housing Stock Calculation Under CGS § 8-30g

By law, the Department of Housing (DOH) must promulgate annually a list identifying the housing stock in each municipality that qualifies as affordable housing under the Affordable Housing Land Use Appeals Procedure (see BACKGROUND). The list, based on Census data, provides this information as a percentage of the total housing stock in the municipality (CGS §§ 8-30g(k) & 8-37qq(a)(2)(D)). The bill specifies that ADUs built or permitted after January 1, 2022, but that are not subject to deed restrictions that qualify them as affordable housing, will not increase a municipality's base (market-rate) housing stock calculation. Thus, as of right ADUs will not increase the amount of affordable housing that a municipality must have to obtain or maintain an exemption or moratorium from the procedure. (Presumably, municipalities will provide DOH with information on ADUs to be excluded from the base housing stock calculation.)

The bill also aligns the definition of "accessory apartment" under the appeals procedure with bill's definition of ADU.

EFFECTIVE DATE: October 1, 2021

§ 2 — TECHNICAL CONSULTANT FEES

Limits municipal authority to charge higher land use application fees for larger residential projects; authorizes municipalities to charge technical consultant fees

Current law allows municipalities to set by ordinance reasonable fees for processing applications submitted to the planning, zoning, or

planning and zoning commission; the zoning board of appeals, or inland wetlands commission. The bill prohibits adopting a fee schedule that imposes higher fees on developments built following an appeal brought under the Affordable Housing Land Use Appeals Procedure (CGS § 8-30g). It also prohibits charging more for residential buildings with more than four units, including higher fees per unit, by square footage, or per unit of construction cost.

The bill additionally allows municipalities to adopt regulations establishing reasonable technical consultant fees for applications made to the abovementioned boards and commissions. The fees must be used to pay consultants who have expertise in land use to review particular technical aspects of an application (e.g., traffic or stormwater), for the benefit of the commission or board.

The fees must be accounted for separately and may only be used for technical review costs. The fees cannot be used to pay a consultant who is a salaried employee of the municipality, commission, or board. Leftover amounts, including any interest accrued, must be returned to the applicant within 45 days after the review is complete.

EFFECTIVE DATE: October 1, 2021

§§ 3 & 4 — CGS § 8-2: REORGANIZATION AND MINOR CHANGES

Reorganizes the Zoning Enabling Act (CGS § 8-2, which applies to municipalities exercising zoning powers under the statutes) and makes minor, technical, and conforming changes

The bill makes various minor, technical, and conforming changes to the Zoning Enabling Act, which applies to municipalities that exercise zoning powers under the statutes (as opposed to a special act).

Among these, the bill authorizes municipalities, through their zoning regulations, to regulate the height, size, location, brightness, and illumination of any sign or billboard, not only advertising signs as under current law. (This comports with case law holding that (1) “advertising signs” means commercial and noncommercial signs aimed at the sale of goods, promulgation of doctrine or idea, securing attendance, or the like and (2) content-based regulation may raise First

Amendment concerns.)

Additionally, the bill specifies that when a municipality is contiguous to, or on a navigable waterway that drains to, Long Island Sound, its regulations must consider a proposed development's environmental impact on Long Island Sound's "coastal resources" (as defined in the Coastal Management Act), rather than impacts on Long Island Sound generally. By law, "coastal resources" means coastal waters and their natural resources, related marine and wildlife habitat, and adjacent shorelands (CGS § 22a-93).

The bill specifically authorizes municipalities to use a vehicle's miles traveled and vehicle trips generated standard instead of a "level of service" traffic calculation when assessing (1) a proposed development's anticipated traffic impact and (2) potential mitigation strategies such as reducing the amount of required parking for a development or requiring public sidewalks, crosswalks, bicycle paths, bicycle racks, or bus shelters (including off-site).

The bill specifies that regulations may provide for floating zones, overlay zones, and planned development districts. (Connecticut courts have held that CGS § 8-2 implicitly grants municipalities the power to use these techniques.)

The bill also makes technical and conforming changes to the temporary health care structure law (§ 3).

EFFECTIVE DATE: October 1, 2021

§ 4 — CGS § 8-2: REQUIRED GOALS AND CONSIDERATIONS

Eliminates a requirement that zoning regulations be (1) designed to prevent overcrowding and undue population concentration and (2) made with reasonable consideration as to the "character" of a district; requires regulations to combat discrimination and provide for varied housing opportunities; requires regulations to be designed to protect historic, tribal, cultural, and environmental resources

Required Goals

The bill eliminates the requirement that zoning regulations be designed to provide adequate light and air, prevent the overcrowding of land, and avoid undue concentration of population.

The bill requires that regulations be designed to do the following:

1. protect the state's historic, tribal, cultural, and environmental resources;
2. consider the impact of permitted land uses on contiguous municipalities and the planning region, including the impact on housing affordability;
3. combat discrimination and take other meaningful actions that overcome patterns of segregation and address significant disparities in housing needs and access to educational, occupational, and other opportunities; and
4. provide for clear processes for, and efficient review of, development proposals.

Consideration of Character

Current law requires that zoning regulations be made with (1) reasonable consideration as to the character of the district and its peculiar suitability for particular uses and (2) a view toward conserving the buildings' value and encouraging the most appropriate use of land throughout a municipality. The bill instead requires that regulations be drafted with reasonable consideration as to the physical site characteristics and architectural context of the district with a view toward encouraging the most appropriate use of land throughout a municipality.

The bill also specifies that regulations cannot be applied to deny a land use application (including site plans, special permits or exceptions, or other zoning approval) based upon:

1. a district's character unless the character is expressly articulated in regulations with clear and explicit physical standards for site work and structures or
2. the immutable characteristics, source of income, or income level of an applicant or end user (other than age or disability, in the

case of age-restricted or disability-restricted housing).

Providing Housing Opportunities

In addition to the housing-related provisions above, the bill requires zoning regulations to provide for, rather than encourage, the development of housing opportunities for all residents of the municipality and local planning region, including opportunities for multifamily dwellings, consistent with soil types, terrain, and infrastructure capacity.

The bill requires zoning regulations to expressly allow, rather than encourage, housing that meets the needs identified in the state’s Consolidated Plan for Housing and Community Development and Plan of Conservation and Development.

EFFECTIVE DATE: October 1, 2021

§ 4 — CGS § 8-2: PROHIBITED PROVISIONS

Prohibits regulations from (1) prohibiting cottage food operations in a residential zone or (2) establishing minimum floor area requirements for buildings; limits local authority to (1) require the provision of parking spaces or (2) place a cap on the number of dwellings in multifamily, middle, or mixed-use developments

The bill prohibits zoning regulations from:

1. prohibiting cottage food operations (i.e., operations in which food products are prepared in a private residential dwelling’s home kitchen and for sale directly to the consumer) in a residential zone,
2. establishing minimum floor area requirements for buildings that are greater than those required under the Public Health Code, or
3. requiring more than one parking space for each studio or one-bedroom dwelling unit or more than two parking spaces for each dwelling unit with two or more bedrooms.

The bill also prohibits regulations from placing a fixed numerical or percentage cap on the number of dwelling units permitted in

multifamily housing over four units, middle housing, or mixed-use developments.

Under the bill, “middle housing” refers to duplexes, triplexes, quadplexes, cottage clusters, and townhouses. A “cottage cluster” is a grouping of at least four detached housing units or live work units, per acre, that are located around a common open area. (The bill does not define live work units.) A “mixed-use development” is a development containing residential and nonresidential uses in a single building. A “townhouse” is a residential building constructed in a grouping of three or more attached units, each of which shares at least one common wall with an adjacent unit and has exterior walls on at least two sides.

EFFECTIVE DATE: October 1, 2021

§ 4 — CGS § 8-2: OPTIONS FOR PROMOTING CONSERVATION

Expands the energy conservation tools and renewable energy types a municipality can require or promote

Current law allows zoning regulations to encourage the use of certain energy conservation tools, including solar. The bill instead allows the regulations to require or promote these and expands them to include distributed generation or freestanding wind and combined heat and power.

The bill also expands the conservation tools that municipalities can incentivize developers’ use of to include any solar and other renewable forms of energy; combined heat and power; water conservation, including demand offsets; and other energy conservation techniques.

EFFECTIVE DATE: October 1, 2021

§ 4 — CGS § 8-2: NONCONFORMING USES

Allows municipalities to discontinue a nonresidential nonconforming use, building, or structure in a residential zone; makes it easier for municipalities to establish that a nonconforming use, building, or structure was abandoned

A nonconforming use is a property use that legally exists at the time a zoning restriction prohibiting or limiting it is adopted (e.g., a business in an area later zoned for single-family housing). The term

also generally applies to lots and structures that do not comply with zoning regulations (e.g., setbacks; see also CGS § 8-13a).

Under existing law, unchanged by the bill, municipalities can prohibit the expansion of a nonconforming use, building, or structure.

Current law prohibits municipalities from discontinuing a nonconforming use, building, or structure that was already in existence when a zoning restriction that prohibited or limited it was adopted unless the property owner voluntarily discontinues and abandons it with the intention of not reestablishing it.

Establishing Abandonment

Current law specifies that demolition or deconstruction alone are insufficient to establish intent to abandon. The bill narrows this rule, applying it only to residential uses, buildings, and structures. Therefore, under the bill, regulations may specify that demolition or deconstruction alone serves as evidence of intent to abandon a nonresidential nonconforming use, building, or structure.

Under current law, regulations cannot specify any time period after which a nonconforming use that is not being used is terminated unless there is an inquiry into the owner's intent. The bill relaxes this standard and instead specifies that regulations cannot terminate a nonconforming use solely as a result of nonuse for a period of less than five years. (It appears that this provision allows regulations to deem an unused, nonconforming use abandoned after a period of five years without an inquiry into the owner's intent.)

Amortization

Under current law, absent voluntary discontinuance and intentional permanent abandonment, zoning regulations cannot phase out or terminate a nonconforming use. The bill authorizes municipalities to adopt regulations discontinuing a nonresidential nonconforming use, building, or structure located in a residential zone after a "reasonable" amount of time. Specifically, the zoning commission (or presumably combined planning and zoning commission) must:

1. declare that a nonresidential nonconforming use, building, or structure is (a) inconsistent with the local plan of conservation and development or (b) a public nuisance and
2. specify a reasonable time for the termination of such nonconforming use, building, or structure (i.e., amortization period).

The bill requires the commission, before making the declaration, to provide the property owner with (1) notice of a duly presented cease and desist order and (2) a public hearing on it.

EFFECTIVE DATE: October 1, 2021

§ 4 — CGS § 8-2: REGULATING MOBILE MANUFACTURED HOMES

Prohibits regulations from imposing on mobile manufactured homes and associated lots conditions that are substantially different from those imposed on other residential developments

The bill prohibits zoning regulations adopted pursuant to CGS § 8-2 from imposing on manufactured homes, including mobile homes, built to federal standards and with a narrowest dimension of 22 feet or more, and associated lots and parks, conditions that are substantially different from those imposed on (1) single-family dwellings and associated lots; (2) multifamily dwellings; or (3) lots with multifamily dwellings, cluster developments, or planned unit developments.

Under current law, manufactured homes and lots cannot be treated substantially differently from single-family dwellings and lots with single-family dwellings. Additionally, manufactured home developments cannot be treated substantially differently from multifamily dwellings or lots with multifamily dwellings, cluster developments, or planned unit developments. The bill removes references to manufactured home developments.

EFFECTIVE DATE: October 1, 2021

§ 7 — MODEL DESIGN GUIDELINES WORKING GROUP

Requires OPM to convene a working group to develop model guidelines for both buildings and context-appropriate streets that municipalities may adopt

The bill requires the Office of Policy and Management (OPM) secretary or her designee to convene and chair an 11-member working group to develop model guidelines for both buildings and context-appropriate streets that municipalities may adopt, in whole or in part, as part of their zoning or subdivision regulations.

Required Components

The model guidelines must accomplish the following:

1. identify common architectural and site design features of building types used throughout Connecticut;
2. create a catalogue of common building types, particularly those typically associated with housing;
3. establish reasonable and cost-effective design review standards for approval of common building types, accounting for topography, geology, climate change, and infrastructure capacity;
4. establish procedures for expediting the approval of buildings or streets that satisfy these design review standards, whether for zoning or subdivision regulations; and
5. create a design manual for context-appropriate streets that complement common building types.

Reporting, Publication, and Training Requirement

By April 1, 2022, the working group must submit a report to the Planning and Development Committee proposing its model design guidelines. OPM must, by that date, post the guidelines and any necessary revisions on its website for use and adoption by municipalities.

The bill requires the regional councils of governments (COGs), by June 1, 2021, to collectively develop and implement an education and training program for delivering the model design guidelines for both

buildings and context-appropriate streets. COGs will not be able to comply with this deadline because it occurs before the bill takes effect.

COGs must report on their education and training programs in their annual report to the legislature required under the regional services grant program law.

Membership

The OPM secretary, in consultation with the housing commissioner, must appoint the following working group members by August 30, 2021:

1. two with expertise in fair housing issues or affordable housing advocacy;
2. two with expertise in state, regional, or local planning;
3. one representative of the Connecticut Conference of Municipalities;
4. two with expertise in architecture or design;
5. one with expertise in the housing construction trade; and
6. the housing and transportation commissioners and OPM secretary, or their designees.

EFFECTIVE DATE: July 1, 2021

§ 8 — ZONING ENFORCEMENT OFFICER CERTIFICATION

Beginning January 1, 2023, requires all appointed ZEOs to obtain and maintain certification from the state's professional ZEO association

Beginning January 1, 2023, and annually thereafter, the bill requires zoning enforcement officers (ZEOs) to obtain certification from the Connecticut Association of ZEOs. The requirement applies to existing employees and to newly appointed ZEOs working in municipalities that exercise zoning authority under the statutes. The bill requires ZEOs to maintain certification for the duration of their employment as ZEOs. (It appears that the bill authorizes un-certified ZEOs to be

appointed, but it requires them to obtain certification as soon as practicable. In practice, the Connecticut Association of ZEOs requires an individual to have at least two years' experience before it grants certification, among other requirements.)

By law, each municipality decides how its zoning regulations are enforced. In practice, the zoning or combined planning and zoning commission may reserve the enforcement power to itself, or it may be delegated to a ZEO. ZEOs may be responsible for (1) investigating zoning violations and issuing cease and desist orders and (2) reviewing and providing an advisory opinion on applications for special permits, site plans, subdivisions, and variances.

EFFECTIVE DATE: October 1, 2021

§§ 9 & 11 — ALTERNATIVE ON-SITE AND SUBSURFACE COMMUNITY SEWAGE SYSTEMS

Expands DPH's authority over alternative on-site sewage treatment systems to include those with a daily capacity of up to 7,500 gallons, instead of up to 5,000 gallons; shifts, from DEEP to DPH, authority over subsurface community sewage systems with a daily capacity of up to 7,500 gallons; and includes accessory apartments as part of the larger main residence for determining the presence of a community sewage system

Starting by January 1, 2022, the bill (1) expands the Department of Public Health's (DPH's) authority over alternative on-site sewage treatment systems to include most of those with a daily capacity of up to 7,500 gallons, instead of up to 5,000 gallons as under current law; (2) eliminates the caveat that DPH have this authority within available appropriations; and (3) shifts, from the Department of Energy and Environmental Protection (DEEP) to DPH, authority over subsurface community sewage systems with a daily capacity of up to 7,500 gallons.

The bill does so by requiring the DPH commissioner to adopt regulations effectuating the changes. She must establish and define discharge categories that comprise these systems and establish minimum requirements for them, including procedures for issuing a permit or approval for a system by the commissioner, a local health director, or a licensed sanitarian.

By law, an alternative on-site sewage treatment system consists of a sewage treatment system that uses a treatment method other than a subsurface sewage disposal system and involves a discharge to groundwater. For purposes of the bill, a subsurface community sewage system is a community sewer system involving a domestic sewage discharge to groundwater.

Under current law, a community sewer system is generally a sewer system service for at least two residences in separate structures that is not connected to a municipal sewer system. The bill specifies that, for purposes of this definition, an accessory apartment is part of the larger principal dwelling unit located on the same lot (see “accessory apartment,” above).

Under existing law, DEEP has jurisdiction over sewage systems not under DPH’s jurisdiction. The bill specifies that it does not affect DEEP permits for alternative on-site sewage treatment systems or subsurface community sewage systems issued before January 1, 2022, and applicable environmental laws continue to apply to the permits until they expire.

Alternative On-Site Sewage Systems

Under current law, DPH has regulatory authority over alternative on-site sewage treatment systems with daily capacities of up to 5,000 gallons. It requires the DPH commissioner to establish and define categories of discharge that constitute these systems (through regulations) and take related actions, but within available appropriations. (To date, no such regulations have been adopted, and DEEP remains responsible for permitting all of these systems.)

The bill (1) increases this threshold, and therefore the capacity of facilities under DPH’s authority, to 7,500 gallons, and (2) eliminates the caveat that DPH effectuate the shift of authority from DEEP to DPH within available appropriations, therefore requiring the DPH commissioner, by January 1, 2022, to establish discharge categories and minimum standards for the treatment systems under DPH’s authority.

The bill also makes a conforming change to a related statutory definition (§ 9).

EFFECTIVE DATE: October 1, 2021

§ 10 — WATER POLLUTION CONTROL PLANS

Adds information about sewer system capacity for certain areas to municipal water pollution control plans and requires copies of these plans to be filed with the DOH commissioner in addition to the DEEP commissioner

The bill requires municipal water pollution control authorities (WPCAs) to include in the water pollution control plans they create the specific capacity allocations to serve developable areas for residential or mixed-use buildings with at least four dwelling units. By law, these plans delineate areas such as those (1) served by the municipal sewerage system, (2) where sewerage facilities are planned, and (3) where sewers should be avoided. The plans also describe municipal programs to avoid pollution problems and manage subsurface sewage disposal.

The bill also requires copies of WPCA plans, and any periodic updates to them, to be filed with DOH in addition to DEEP as the law already requires.

EFFECTIVE DATE: October 1, 2021

BACKGROUND

Information on the Affordable Housing Land Use Appeals Procedure and related bills

Affordable Housing Land Use Appeals Procedure (CGS § 8-30g)

The procedure requires municipal planning and zoning agencies (“municipalities”) to defend their decisions to reject affordable housing development applications or approve them with costly conditions. In traditional land use appeals, the developer must convince the court that the municipality acted illegally, arbitrarily, or abused its discretion. The procedure instead places the burden of proof on municipalities.

With limited exceptions, developers can use the appeals procedure to contest a municipality’s decision on an affordable housing

development application submitted to a municipality if (1) fewer than 10% of the municipality's housing units are affordable, based on certain statutory criteria, and (2) the municipality has not qualified for a moratorium (i.e., a temporary suspension of procedure following a relatively rapid increase in affordable housing stock).

By law, DOH annually publishes a list of housing stock in each municipality that qualifies as affordable housing.

Related Bills

sSB 87 (File 181), favorably reported by the Housing Committee, makes many of the same technical changes to the Zoning Enabling Act and also prohibits regulations from (1) treating licensed group child care homes located in a residence differently than single or multifamily properties and (2) requiring a special permit or exception to operate either a family or group child care home located in a residence within a residential zone.

sSB 961, favorably reported by the Planning and Development Committee, also shifts, from DEEP to DPH, regulatory authority over (1) alternative on-site sewage treatment systems with daily capacities of between 5,000 and 7,500 gallons and (2) small community sewage systems with daily capacities of up to 10,000 gallons.

sHB 6107, favorably reported by the Planning and Development Committee, makes many of the same technical and minor changes to the Zoning Enabling Act, but it also requires municipalities to demonstrate that their regulations provide varied housing development opportunities and promote housing choice and economic diversity in housing.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute

Yea 17 Nay 9 (03/31/2021)