

Using Zoning to Require Energy Conservation Measures

By: Julia Singer Bansal, Senior Legislative Attorney
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Issue

What energy conservation measures may a municipality require through its zoning regulations, under [CGS § 8-2](#), as amended by [PA 21-29](#), § 4? Does the State Building Code (SBC) preempt local requirements?

The Office of Legislative Research is not authorized to provide legal opinions and this report should not be considered one.

Summary

Prior to October 1, 2021, the law allowed zoning regulations adopted pursuant to the authority granted in [CGS § 8-2](#) (i.e., the Zoning Enabling Act) to *encourage* the use of certain energy conservation tools, including solar. [PA 21-29](#), § 4, effective October 1, 2021, instead allows zoning regulations to *require or promote* these tools and specifically includes (1) distributed generation or freestanding wind and (2) combined heat and power. The 2021 law 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. Prior law specifically addressed only passive solar techniques.

[CGS § 29-253](#) states that the SBC, including any amendment to it adopted by the State Building Inspector and Codes and Standards Committee, is the building code for all towns, cities, and boroughs. A [1992 attorney general opinion](#) concluded: “[i]n enacting the Fire Safety Code and

Building Code the legislature manifested an intent to provide for uniformity throughout the State of Connecticut in the field of building and fire safety regulations. Local ordinances affecting areas regulated by these codes would destroy that uniformity.”

According to the Office of the State Building Inspector (OSBI), the law does not allow municipalities to enact requirements that depart from the SBC. Since the SBC includes energy conservation requirements, the OSBI has determined that municipalities are precluded from enacting regulations requiring stricter energy conservation standards than the building code.

(Note: the law authorizes a municipality to propose amendments to the state building code ([CGS § 29-254](#)),.)

Authority Granted by PA 21-29 and Conflict With SBC

PA 21-29 states that local zoning regulations may, among other things:

1. “[r]equire or promote (A) energy-efficient patterns of development; (B) the use of distributed generation or freestanding solar, wind and other renewable forms of energy; (C) combined heat and power; and (D) energy conservation” and
2. “[p]rovide for incentives for developers who use (A) solar and other renewable forms of energy; (B) combined heat and power; (C) water conservation, including demand offsets; and (D) energy conservation techniques, including, but not limited to, cluster development, higher density development and performance standards for roads, sidewalks and underground facilities in the subdivision.”

However, according to the OSBI, some of these provisions are preempted by CGS § 29-253, specifically those that appear to authorize municipalities to limit, further than the SBC does, the allowable systems, components, or materials that can be used in a building project (e.g., a regulation *requiring* the use of insulation that is more energy efficient than the SBC requires or the use of solar panels).

Municipalities will generally not run afoul of the SBC’s supremacy by *promoting or incentivizing* energy conservation measures or patterns of development (e.g., regulations aimed at limiting sprawl or allowing denser development if combined heat and power systems are installed). Problems arise when municipalities mandate that construction exceed the minimum standards established in the SBC.

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