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## **OLR Bill Analysis**

### **sHB 5390 (as amended by House "A")\***

#### ***AN ACT CONCERNING TRANSIT-ORIENTED COMMUNITIES.***

#### **SUMMARY**

This bill creates a framework in which a municipality's priority for receiving certain discretionary state funding may be tied to its designation as a qualifying transit-oriented community (TOC). A municipality generally becomes a TOC by establishing a transit-oriented district (or "district") that meets certain requirements, including containing a rapid transit station or bus station. TOCs must, among other requirements, allow certain multifamily and deed-restricted (i.e., affordable) housing developments in these districts "as of right" (see BACKGROUND).

Under the bill, a transit-oriented district is an area the municipality designates that is subject to zoning criteria designed to encourage increased development density (including mixed-use development).

The bill also:

1. establishes an interagency council on housing development to advise and assist the Office of Responsible Growth coordinator;
2. requires the Office of Policy and Management (OPM) secretary to establish, within available funding, a program providing grants to regional councils of government for public transit, bicycle, or pedestrian infrastructure projects (§ 4); and
3. makes conforming and technical changes.

\*House Amendment "A" primarily (1) requires TOCs to allow certain developments as of right only in designated transit-oriented districts, rather than anywhere in the municipalities; (2) similarly limits the deed-

restriction requirements (for developments with 10 or more units not allowed as of right) to these districts; and (3) eliminates provisions from the underlying bill establishing a public water and sewer rehabilitation or expansion account and making transit-oriented districts established under the bill qualify as “housing growth zones” for purposes of the Connecticut Municipal Redevelopment Authority.

EFFECTIVE DATE: October 1, 2024, except the provision establishing the interagency council is effective upon passage.

### **§§ 1, 2, 5 & 6 — PRIORITIZED FUNDING FOR TRANSIT-ORIENTED COMMUNITIES**

The bill makes qualifying TOCs eligible for prioritized discretionary infrastructure funding (“discretionary funding”), which includes certain state grants, loans, and other financial assistance. A municipality generally becomes a TOC by establishing a transit-oriented district meeting certain requirements, as described below. Additionally, the bill requires TOCs to allow certain housing developments as of right in their districts and establish deed-restriction requirements for other developments not allowed as of right. It also restricts TOCs from adopting certain regulations for their districts.

#### ***Discretionary Infrastructure Funding***

***Prioritized TOCs.*** Under the bill, to receive prioritized discretionary funding, TOCs (and municipalities that have adopted a resolution stating their intent to become one; see below), must (1) meet the funding program’s eligibility criteria and (2) apply to the OPM secretary in a form he sets. The secretary then makes recommendations to the agency that administers the funding. If the funding type is permitted to be prioritized, the agency may give these municipalities priority status over other applicants that are not TOCs (or have not adopted a resolution).

Additionally, the bill requires administering agencies to give higher priority for discretionary funding to TOCs with a transit-oriented district located in a priority funding area (i.e., areas designated in the state Plan of Conservation and Development within which certain state-

funded growth-related projects may generally be undertaken). In other words, it requires agencies to prioritize these priority funding area TOCs above other TOCs as well as municipalities that are not TOCs.

**Covered Funding Sources and Uses.** Under the bill, “discretionary infrastructure funding” means any grant, loan, or other financial assistance that (1) the state administers under the Urban Act Grant Program, Small Town Economic Assistance Program, Main Street Investment Fund, and Incentive Housing Zone Program or (2) OPM or the economic development or transportation departments manage for transit-oriented development purposes (see BACKGROUND).

The bill limits the purposes for which TOCs may spend funding they receive on a priority basis. TOCs may only spend this funding on improvements in the districts, specifically to develop, improve, expand, manage, or maintain them (and may do so even if the expenditure benefits real property outside of the district).

The bill specifies that it does not make any municipalities ineligible for discretionary funding, even if they are not TOCs eligible for prioritized funding.

**Bonus Funding.** The bill makes TOCs eligible for additional funding under any program the OPM secretary administers if the TOC adopts additional zoning criteria (in addition to meeting all other TOC requirements discussed below), including (1) higher density development, (2) requiring greater housing unit affordability in certain larger proposed developments not allowed as of right than what the bill specifically requires, (3) developing public land or public housing, (4) implementing programs to encourage homeownership, and (5) other criteria the OPM secretary may set.

### ***Qualifying for Prioritized Funding***

Under the bill, a municipality is eligible for prioritized discretionary funding if it (1) qualifies as a TOC, (2) adopts a resolution stating its intent to become a TOC, or (3) establishes a transit-oriented district containing a rapid transit station or regular bus service station by

October 1, 2025, and applies to the OPM secretary for a determination that it qualifies as a TOC. The OPM secretary, or his consultant, may grant this determination if he or she finds that the municipality complies with the bill's requirements.

The bill specifies that it does not allow the OPM secretary to deem a municipality a TOC without its approval or require that every municipality with a transit-oriented district be determined a TOC.

**Qualifying as a TOC.** TOCs are generally municipalities that have adopted a reasonably sized, as determined by the OPM secretary or his consultant, transit-oriented district, containing at least one of the following:

1. a regular bus service station (i.e., bus stop) operating no less than five days per week or
2. a rapid transit station or a planned station (i.e., any public transportation station serving any rail or rapid bus route).

Additionally, the district must (1) encompass all the land within a one-half mile radius of these stations or (2) be located within a reasonable distance, as determined by the secretary (or his consultant), of any other transit service, a commercial corridor, or the municipality's downtown area (i.e., a central business district or other commercial area that, among other things, serves as a center of socioeconomic interaction).

**Adopting a Resolution.** A municipality that is not a qualifying TOC is still eligible for prioritized discretionary funding if its legislative body adopts a resolution stating it intends to enact zoning regulations enabling it to qualify. It must actually enact the regulations within 18 months after adopting the resolution. A municipality that fails to do so must return any prioritized discretionary funding it received, unless the OPM secretary grants an extension at his discretion, and is also ineligible for additional prioritized funding until it enacts these zoning regulations.

**Requirements for Developments in TOCs**

**As-of-Right Developments.** Qualifying TOCs must allow the following developments as of right (after an inland wetlands public hearing, if one is required) in any transit-oriented district:

1. middle housing developments with up to nine units;
2. developments with 10 or more units, at least 30% of which qualify as an 8-30g set-aside development (see BACKGROUND); and
3. developments, with any number of units, if they are (a) built on land owned by the municipality, the state, the municipality's public housing authority, a nonprofit, or a religious organization and (b) composed entirely of units that are deed-restricted, for at least 40 years after initial occupancy, so they are affordable (i.e., costing 30% or less of one's annual income) for renters or buyers earning 60% or less of the state median income or federally determined area median income (AMI), whichever is less.

Under the bill, "middle housing developments" generally include duplexes, triplexes, townhomes, and perfect sixes (three-story buildings with two units per story).

**Deed Restrictions for Developments Not Allowed As of Right.** TOCs must require developers proposing developments with 10 or more units (unless allowed as of right as described above) in a transit-oriented district to either (1) deed restrict a certain percentage of the units for at least 40 years after initial occupancy (see the table below), so they are affordable for renters or buyers earning no more than 60% of the state median income or AMI, whichever is less, or (2) enter into a contribution agreement to make payments to a fund that the TOC may establish under the bill and use only to develop affordable housing in the municipality ("affordable housing development fund").

Under the bill, the percentage of units that a developer must deed restrict varies with the strength of the area's housing market and its quality of life ("opportunity"), as determined by the Connecticut

Housing Finance Authority’s (CHFA) most recent Housing Needs Assessment. The table below shows the classifications and corresponding percentage of units that must be restricted under the bill.

**Table: Deed-Restriction Requirements**

<i>CHFA's Census Tract Designation</i>	<i>Restricted Units</i>
High Opportunity/Heating Market	15%
High Opportunity/Cooling Market	15%
Low Opportunity/Heating Market	10%
Low Opportunity/Cooling Market	5%

If a town has established an affordable housing development fund, developers subject to these deed-restriction requirements can make payments to the fund instead of deed restricting units. The OPM secretary determines the payment amounts and duration and must also approve the contribution agreements.

**Accessory Apartments.** Under the bill, a person who owns real property in a transit-oriented district, and has owned property in the municipality for at least three years, may build an accessory apartment as of right on his or her property. These owners may do so even if the municipality voted to opt out of the state law generally allowing accessory apartments as of right on lots with single-family homes in all municipalities. (It is unclear whether the property owner can build the accessory apartment only in the district or anywhere in the municipality.)

Under existing law, “accessory apartment” means a separate dwelling 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.

***Transit-Oriented District Boundaries***

***Inland Wetlands Agency Consultation.*** A municipality’s zoning commission must consult with its inland wetlands agency when establishing the district’s boundaries. If the proposed district includes

an area over which the agency has authority (e.g., wetlands), the commission must collaborate with the agency to determine whether as-of-right middle housing and mixed-use developments should be allowed in any part of the district. The zoning commission may also consult with the agency, and other town agencies, to determine whether the district is a reasonable size (see below).

**Reasonable Size.** To qualify as a TOC, a municipality's transit-oriented district must be a reasonable size. Under the bill, the OPM secretary (or his consultant), in consultation with the zoning commission, is responsible for determining whether a district meets this requirement. To do so, the secretary or consultant must (1) determine whether the area can equitably support greater development density, based on the municipality's geographic characteristics, and (2) consider the municipality's and region's housing needs.

When making its determination, the OPM secretary cannot require the following land types to be included in the transit-oriented district:

1. special flood hazard areas on the National Flood Insurance Program's flood insurance rate map;
2. wetlands, as defined in state law;
3. existing or planned public park land;
4. land subject to conservation or preservation restrictions (e.g., an easement);
5. coastal resources protected by the Coastal Management Act;
6. areas needed to protect drinking water supplies; and
7. areas likely to be inundated during a 30-year flood event, as shown in the sea level change scenarios UConn's Marine Sciences Division publishes.

### ***District Regulations and OPM Guidelines***

The bill requires OPM to adopt guidelines on the development of

housing in TOCs' transit-oriented districts, including parking requirements, lot size and coverage, setback requirements, floor area ratio, height restrictions, inclusionary zoning requirements, and development impact fees.

The bill generally requires that any regulations TOCs adopt for their districts substantially comply with these OPM guidelines. However, it allows TOCs to apply to the OPM secretary, in a way he prescribes, for an exemption from the guidelines. But they may not apply for an exemption from the bill's requirements that certain developments be allowed in districts as of right (see *As-of-Right Developments* above). The secretary must approve or deny a TOC's application in writing within 60 days after receiving it and cannot unreasonably withhold approval.

If the OPM secretary denies a TOC's application for an exemption from the guidelines, the bill allows the TOC to opt out of the bill's transit-oriented provisions. If a TOC opts out, it is no longer eligible to be prioritized for discretionary funding and must return any that it received under the bill.

The bill also allows the OPM secretary to approve conflicting regulations based on local factors the TOC identifies. It is unclear if the TOC must go through the application process first.

### **§ 3 — INTERAGENCY COUNCIL ON HOUSING DEVELOPMENT**

The bill establishes an interagency housing development council to advise the Office of Responsible Growth (ORG) coordinator and help her review regulations, develop guidelines, and establish transit-oriented district programs to support responsible housing growth in the state.

#### ***Purpose***

The council must first meet by July 1, 2024, and then at least every six months to:

1. evaluate state and quasi-public agencies' plans, programs, regulations, and policies for opportunities to combine their efforts and resources to increase housing development;



2. develop methods to consistently report and document housing development data;
3. develop approaches to housing growth that balance conservation needs (e.g., natural resources protection) and development needs (e.g., housing, economic growth, and infrastructure);
4. review whether discretionary state grant programs adhere to the state Plan of Conservation and Development's goals and make recommendations to agencies and quasi-public agencies, including on ways to increase deed-restricted developments in transit-oriented districts and middle housing; and
5. create guidelines on adopting and developing transit-oriented districts in TOCs, including prioritizing mixed-use and mixed-income developments, increasing affordable housing availability, environmental (particularly environmental justice) considerations, increasing mass transit ridership and other means of mobility (e.g., walking and biking) while reducing the need for motor vehicles, maximizing developable land, increasing developments' economic viability, and reducing the time needed to approve development applications.

### ***Reporting Requirements***

Beginning by October 1, 2025, the ORG coordinator must annually submit the council's recommendations to the Planning and Development and Housing committees. By the same date, the coordinator must also submit the council's zoning and land use policy recommendations and transit-oriented district guidelines, described above, to these legislative committees and post this information on OPM's website.

### ***Members***

In addition to the ORG coordinator (who serves as the chairperson), and any ad hoc members she determines are needed, the council consists of the following ex officio members or their designees:

1. OPM secretary,

2. Department of Housing commissioner,
3. Department of Economic and Community Development commissioner,
4. Department of Energy and Environmental Protection commissioner,
5. Department of Public Health commissioner,
6. Department of Transportation commissioner, and
7. CHFA chief executive officer.

## **BACKGROUND**

### ***As-of-Right Developments***

By law, “as of right” means able to be approved without requiring (1) a public hearing; (2) a variance, special permit, or special exception; or (3) other discretionary zoning action, other than a determination that a site plan conforms with applicable zoning regulations.

### ***Transit-Oriented Development***

By law, transit-oriented development is defined as developing residential, commercial, and employment centers within one-half mile or walking distance of public transportation facilities (including rail and bus rapid transit and services) that meet transit supportive standards for land uses, built environment densities, and walkable environments, in order to facilitate and encourage the use of transit services (CGS § 13b-79o).

### ***8-30g Set-Aside Development***

Under the affordable housing land use appeals procedure (referred to as “8-30g”), a set-aside development means a development in which, for at least 40 years after initial occupancy, at least 30% of the units are deed restricted. Specifically, at least (1) 15% of the units must be deed restricted to households earning 60% or less of the AMI or state median income (SMI), whichever is less, and (2) 15% of the units must be deed restricted to households earning 80% or less of the AMI or SMI, whichever is less.

**COMMITTEE ACTION**

Planning and Development Committee

Joint Favorable Substitute

Yea 12 Nay 8 (03/15/2024)