



PA 21-29—sHB 6107

Planning and Development Committee

AN ACT CONCERNING THE ZONING ENABLING ACT, ACCESSORY APARTMENTS, TRAINING FOR CERTAIN LAND USE OFFICIALS, MUNICIPAL AFFORDABLE HOUSING PLANS AND A COMMISSION ON CONNECTICUT'S DEVELOPMENT AND FUTURE

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BACKGROUND

§§ 1, 6, 7 & 10 — 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 unless they follow the act's opt-out process; 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; specifies that the addition of an ADU on a lot does not make the sewerage system a "community sewerage system"

Definitions

Under the act, an "accessory apartment" (also referred to as an accessory dwelling unit or "ADU") 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.

The act specifies that "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.

Regulation Adoption Requirement

The act requires municipalities that exercise powers under CGS § 8-2 (the

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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. But the act also creates an opt-out process, as described below.

The act specifies that municipalities cannot require as of right ADUs sharing a lot with a single-family home to be preserved for lower-income families (i.e., an “affordable accessory apartment,” which, generally, is a deed restricted unit made affordable for households with incomes that do not exceed 80% of the median income).

If a municipality does not opt out and does not amend or adopt ADU regulations by January 1, 2023, the act requires the municipality to review ADU permit applications in accordance with the act’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 act. The act deems noncompliant regulations to be null and void.

Opt-Out Process

Until January 1, 2023, the act allows municipalities to opt out of the act’s as of right ADU provisions. To do so, the municipality’s zoning or combined planning and zoning commission must:

1. first hold a public hearing on the proposed opt-out, subject to the standard notice and timeframes for such hearings;
2. affirmatively decide by a two-thirds vote to opt out within the statutory time limit (generally within 65 days of the hearing’s completion);
3. state in the record the reasons for its decision; and
4. publish notice of the decision within 15 days in a newspaper that has substantial circulation in the municipality.

The act requires the opt-out to be confirmed by a two-thirds vote of the municipal legislative body (or if it is a town meeting, the board of selectmen).

As of Right Permitting

The act 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 an application unless an applicant approves an extension or extensions of up to 65 days total or withdraws the application.

Under the act, 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 act, the ADU zoning regulations must:

1. allow attached and detached ADUs and ADUs contained within the

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

Additionally, the act 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.

Under existing law, a community sewer system is a sewer system service for at least two residences in separate structures that is (1) not connected to a municipal sewer system or (2) connected to it as a distinct and separately managed segment of the system. The act specifies that a "community sewerage system" does not include a system serving only a principal dwelling and ADU located on the same lot.

The act does not prevent municipalities from prohibiting or limiting the use of ADUs for short-term rentals or vacation stays.

Housing Stock Calculation Under CGS § 8-30g

The Department of Housing (DOH) annually promulgates a list identifying the housing stock in each municipality that qualifies as affordable housing under the

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Affordable Housing Land Use Appeals Procedure (see BACKGROUND). The list, based on U.S. Census data, provides this information as a percentage of the total housing stock in the municipality (see CGS §§ 8-30g(k) & 8-37qqq(a)(2)(D)). The act 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. Therefore, 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.

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

EFFECTIVE DATE: January 1, 2022, for the main ADU provisions (§ 6) and October 1, 2021, for the definitions and conforming changes (§§ 1, 7 & 10).

§ 2 — APPLICATION AND TECHNICAL CONSULTANT FEES

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

Existing law allows municipalities, by ordinance, to set 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 act 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 using a fee schedule charging more because a residential building has more than four units, including higher fees per unit, per square footage, or per unit of construction cost.

The act 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 act 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).

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Among these, the act specifies that when a municipality is contiguous to, or on a navigable waterway that drains to, Long Island Sound, its regulations must require the zoning commission to consider a proposed development's environmental impact on Long Island Sound's coastal resources, 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 act specifically authorizes municipalities to use a vehicle's estimated miles traveled and vehicle trips generated standard instead of, or in addition to, 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 act 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 act 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 that regulations provide for varied housing opportunities and affirmatively further the purposes of the federal Fair Housing Act; requires regulations to be designed to protect historic, tribal, cultural, and environmental resources

Required Goals

The act eliminates the requirement that zoning regulations be designed to prevent the overcrowding of land and avoid undue concentration of population.

The act 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;
3. address significant disparities in housing needs and access to educational, occupational, and other opportunities;
4. affirmatively further the purposes of the federal Fair Housing Act; and
5. promote efficient review of proposals and applications.

Consideration of Character

Prior law required 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 act

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eliminates the broad requirement that regulations consider character and preserve property values. Instead, it requires consideration of a district's physical site characteristics and its peculiar suitability for particular uses, with a view toward encouraging the most appropriate use of land throughout a municipality.

The act 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, income source, 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 act requires zoning regulations to provide for, rather than encourage, the development of housing opportunities for all residents of the municipality and local planning region. This includes opportunities for multifamily dwellings consistent with soil types, terrain, and infrastructure capacity.

The act 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 & 5 — CGS § 8-2: PROHIBITED PROVISIONS

Prohibits regulations from (1) prohibiting cottage food operations in a residential zone; (2) placing a cap on the number of dwellings in multifamily, middle, or mixed-use developments; or (3) establishing minimum floor area requirements for dwelling units; limits local authority to require the provision of parking spaces

The act 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 dwelling units that are greater than those required under applicable building, housing, or other code; or
3. 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 act, "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

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common open area. 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.

The act also prohibits regulations from 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 unless the municipality opts out as authorized under the act.

To opt out of the act’s parking provision, the municipality’s zoning or combined planning and zoning commission must do the following:

1. first hold a public hearing on the proposed opt-out, subject to the standard notice and timeframes for such hearings;
2. affirmatively decide by a two-thirds vote to opt out within the statutory time limit (generally within 65 days of the hearing’s completion);
3. state in the record the reasons for its decision; and
4. publish notice of the decision within 15 days in a newspaper that has substantial circulation in the municipality.

The act requires the opt-out to be confirmed by a two-thirds vote of the municipal legislative body (or, if it is a town meeting, the board of selectmen).

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 promote, including explicitly authorizing regulations to require certain conservation measures

Prior law allowed zoning regulations to encourage the use of certain energy conservation tools, including solar. The act instead allows the regulations to require or promote these and specifically includes distributed generation or freestanding wind and combined heat and power.

The act 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.

EFFECTIVE DATE: October 1, 2021

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

Specifies how regulations must treat mobile manufactured homes and associated lots

Under prior law, zoning regulations adopted under CGS § 8-2 could not treat manufactured homes and lots substantially differently from single-family dwellings and lots with those dwellings. Additionally, prior law specified that under such regulations, manufactured home developments could not be treated substantially differently from multifamily dwellings or associated lots, cluster

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developments, or planned unit developments.

The act instead prohibits regulations from imposing on manufactured homes, including mobile homes and associated lots and parks, conditions that are substantially different from those imposed on single- or multi-family dwellings and associated lots, cluster developments, or planned unit developments. The act removes references to manufactured home developments for these purposes.

As under prior law, these provisions apply to manufactured homes built to federal standards and with a narrowest dimension of 22 feet or more.

EFFECTIVE DATE: October 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 act requires zoning enforcement officers (ZEOs) working in municipalities that exercise zoning authority under the statutes to obtain certification from the Connecticut Association of ZEOs. The act requires ZEOs to maintain certification for the duration of their employment as ZEOs.

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 — BIENNIAL TRAINING FOR CERTAIN LAND USE OFFICIALS

Requires local planning and zoning officials to complete at least four hours of training biennially

Beginning January 1, 2023, the act requires each member of a local planning commission, zoning commission, planning and zoning commission, or zoning board of appeals to complete at least four hours of training biennially.

Members serving on a board or commission as of January 1, 2023, must complete their initial training by January 1, 2024. Members not serving on January 1, 2023, must complete the training within one year after being elected or appointed to the board or commission.

The initial and subsequent training must include at least one hour on affordable and fair housing policies. Training may also cover:

1. process and procedural matters, including the conduct of effective meetings and public hearings and the Freedom of Information Act;
2. the interpretation of site plans, surveys, maps, and architectural conventions; and
3. the impact of zoning on the environment, agriculture, and historic resources.

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By January 1, 2022, the act requires the Office of Policy and Management secretary to establish guidelines for the training in collaboration with land use training providers, including the Connecticut Association of Zoning Enforcement Officials, the Connecticut Conference of Municipalities, the Connecticut Chapter of the American Planning Association, the Land Use Academy at UConn's Center for Land Use Education and Research, the Connecticut Bar Association, regional councils of governments, and other nonprofit or educational institutions that provide land use training. If the secretary fails to establish the guidelines, then land use training providers may create and administer appropriate training.

The act requires each board or commission, starting by March 1, 2024, to annually submit to its municipal legislative body (or board of selectmen, if a town meeting) a statement affirming its members' compliance with the act's training requirement.

EFFECTIVE DATE: Upon passage

§ 11 — WATER POLLUTION CONTROL PLANS

Allows WPCAs to add information about sewer system capacity for certain areas to municipal water pollution control plans

By law, water pollution control plans created by municipal water pollution control authorities (WPCAs) 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 act allows WPCAs to delineate in these plans the specific capacity allocations to serve developable areas for residential or mixed-use buildings with at least four dwelling units.

EFFECTIVE DATE: October 1, 2021

§ 12 — AFFORDABLE HOUSING PLANNING REQUIREMENT

Specifies that municipalities must prepare and adopt their first plans by June 1, 2022; requires plans to be submitted to OPM

Existing law requires every municipality, at least once every five years, to prepare or amend and adopt an affordable housing plan specifying how the municipality will increase the number of affordable housing developments in its jurisdiction. The act specifies that municipalities must prepare and adopt their first plans by June 1, 2022. The act also requires municipalities to post their draft plan or updates online. Under prior law, this was only required if they held a public hearing on the draft plan or updates. (As under prior law, if they hold a hearing, they must post the draft plan online at least 35 days beforehand.) It eliminates a requirement that the draft plan or amendment be filed with the town clerk.

The act requires municipalities to submit their plans to OPM for posting on its website. Under prior law, if a municipality did not comply with plan amendment deadlines, it had to submit a letter to the housing commissioner explaining why.

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The act instead requires them to submit the letter to OPM and, in providing this explanation, specify a date by which the plan will be amended.

The act also authorizes municipalities to submit their affordable housing plans as part of their local plan of conservation and development (POCD). Those doing so may submit their affordable housing plan early to coincide with a POCD submission, so long as their next submission is five years later. (POCDs are due every 10 years.)

EFFECTIVE DATE: Upon passage

§ 13 — COMMISSION ON CONNECTICUT'S DEVELOPMENT AND FUTURE

Establishes a commission within the Legislative Department to evaluate policies related to land use, conservation, housing affordability, and infrastructure

The act establishes a Commission on Connecticut's Development and Future within the Legislative Department to evaluate policies related to land use, conservation, housing affordability, and infrastructure.

The act specifies that the commission may accept administrative support and technical and research assistance from employees of the Joint Committee on Legislative Management and outside organizations. The co-chairpersons may establish working groups consisting of commission members and nonmembers and may designate a chairperson of each working group.

Membership

The commission consists of the following members:

1. two appointed by the House speaker, one who is a legislator and one who represents a municipal advocacy organization;
2. two appointed by the Senate president pro tempore, one who is a legislator and one who has expertise in state or local planning;
3. two appointed by the House majority leader, one who has expertise in state affordable housing policy and one who represents a town with a population over 30,000 but less than 75,000;
4. two appointed by the Senate majority leader, one who has expertise in zoning policy and one with expertise in community development policy;
5. two appointed by the House minority leader, one who has expertise in environmental policy and one who represents a municipal advocacy organization;
6. two appointed by the Senate minority leader, one who represents the Connecticut Association of Councils of Governments and one with expertise in homebuilding;
7. two appointed by the governor, one who is an attorney with expertise in planning and zoning and one who has expertise in fair housing;
8. the chairs and ranking members of the Planning and Development, Environment, Housing, and Transportation committees;
9. the administrative services, economic and community development,

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energy and environmental protection, housing, and transportation commissioners, or their designees; and

10. the OPM secretary.

The House speaker and Senate president pro tempore cannot appoint as their legislative appointees a chair or ranking member of the Planning and Development, Environment, Housing, or Transportation committee. The act requires appointing authorities, in cooperation with one another, to make a good faith effort to ensure that, to the extent possible, the commission's membership closely reflects Connecticut's gender and racial diversity.

Members serve without compensation, except for necessary expenses incurred in the performance of their duties. Appointing authorities must fill any vacancy.

The House speaker and Senate president pro tempore must jointly select one of their legislative appointments to serve as one of the chairpersons. The OPM secretary serves as the other chairperson. The chairpersons are responsible for scheduling the first commission meeting.

Responsibilities

By January 1, 2022, and again by January 1, 2023, the commission must submit a report to the Planning and Development, Environment, Housing, and Transportation committees and to the OPM secretary regarding the following:

1. any recommendations for statutory changes to the process for developing, adopting, and implementing the state plan of conservation and development;
2. any recommendations for (a) statutory changes to the process for developing and adopting the state's consolidated plan for housing and community development and (b) implementing it;
3. any recommendations for guidelines and incentives for compliance with the law's (a) affordable housing planning requirement (see above, § 12) and (b) requirements under the Zoning Enabling Act that zoning regulations provide opportunities for developing varied housing opportunities, promote housing choice and economic diversity in housing, and expressly allow for housing to be developed that meets the needs identified in the state's consolidated plan for housing and community development and plan of conservation and development;
4. any recommendations as to how such compliance should be determined, as well as the form and manner in which evidence of such compliance should be demonstrated;
5. (a) existing categories of discharge that constitute alternative on-site sewage treatment systems, subsurface community sewerage systems, and decentralized systems; (b) current administrative jurisdiction to issue or deny permits and approvals for these systems (with reference to these systems' daily capacities); and (c) the potential impacts of increasing their daily capacities, including changes in administrative jurisdiction over these systems and the timeframe for adopting regulations to implement these changes; and

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6. development of (a) model design 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 as described below and (b) implementation by the regional councils of governments of an education and training program for delivering the model design guidelines.

Under the act, the report on model design guidelines must provide guidelines that:

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 complements common building types.

The act specifies that the provision requiring the commission to provide recommendations related to compliance with the state's affordable housing planning requirement should not be construed to change municipalities' obligation to adopt or amend their plans on-time.

If the commission is unable to meet the first reporting deadline (January 1, 2022), the co-chairpersons must request an extension from the House speaker and Senate president pro tempore and must submit an interim report. The commission terminates when it submits its final report or January 1, 2023, whichever is later.

EFFECTIVE DATE: Upon passage

BACKGROUND

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

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that qualifies as affordable housing.