



General Assembly

January Session, 2023

Committee Bill No. 5326

LCO No. 4628



Referred to Committee on HOUSING

Introduced by:
(HSG)

***AN ACT CONCERNING THE AFFORDABLE HOUSING APPEALS
PROCESS AND REMOVING THE MUNICIPAL OPT-OUT DEADLINE
FOR ACCESSORY APARTMENTS.***

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

1 Section 1. Subsections (a) to (k), inclusive, of section 8-30g of the
2 general statutes are repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2023*):

4 (a) As used in this section and section 8-30j:

5 (1) ["Affordable housing development" means a proposed housing
6 development which is (A) assisted housing, or (B) a set-aside
7 development] "Affordable housing application" means any application
8 made to a commission in connection with an affordable housing
9 development by a person who proposes to develop such affordable
10 housing;

11 (2) ["Affordable housing application" means any application made to
12 a commission in connection with an affordable housing development by
13 a person who proposes to develop such affordable housing] "Affordable
14 housing development" means a proposed housing development that is

15 (A) assisted housing, or (B) a set-aside development;

16 (3) "Assisted housing" means housing [which] that is receiving, or
17 will receive, financial assistance under any governmental program for
18 the construction or substantial rehabilitation of low and moderate
19 income housing, and any housing occupied by persons receiving rental
20 assistance under chapter 319uu or Section 1437f of Title 42 of the United
21 States Code;

22 (4) "Average prime offer rate" has the same meaning as provided in
23 12 CFR 1026.35, as amended from time to time, effective annually on
24 January first and applied for each calendar year;

25 ~~[(4)]~~ (5) "Commission" means a zoning commission, planning
26 commission, planning and zoning commission, zoning board of appeals
27 or municipal agency exercising zoning or planning authority;

28 (6) "Commissioner" means the Commissioner of Housing.

29 (7) "Median income" means, after adjustments for family size, the
30 lesser of the state median income or the area median income for the area
31 in which the municipality containing the affordable housing
32 development is located, as determined by the United States Department
33 of Housing and Urban Development;

34 ~~[(5)]~~ (8) "Municipality" means any town, city or borough, whether
35 consolidated or unconsolidated; and

36 ~~[(6)]~~ (9) "Set-aside development" means a development in which not
37 less than thirty per cent of the dwelling units will be conveyed by deeds
38 containing covenants or restrictions which shall require that, for at least
39 forty years after the initial occupation of the proposed development,
40 such dwelling units shall be sold or rented at, or below, prices which
41 will preserve the units as housing for which persons and families pay
42 thirty per cent or less of their annual income, where such income is less
43 than or equal to eighty per cent of the median income. In a set-aside
44 development, of the dwelling units conveyed by deeds containing

45 covenants or restrictions, a number of dwelling units equal to not less
46 than fifteen per cent of all dwelling units in the development shall be
47 sold or rented to persons and families whose income is less than or equal
48 to sixty per cent of the median income and the remainder of the dwelling
49 units conveyed by deeds containing covenants or restrictions shall be
50 sold or rented to persons and families whose income is less than or equal
51 to eighty per cent of the median income. [;

52 (7) "Median income" means, after adjustments for family size, the
53 lesser of the state median income or the area median income for the area
54 in which the municipality containing the affordable housing
55 development is located, as determined by the United States Department
56 of Housing and Urban Development; and

57 (8) "Commissioner" means the Commissioner of Housing.]

58 (b) (1) Any person filing an affordable housing application with a
59 commission shall submit, as part of the application, an affordability plan
60 which shall include at least the following: (A) Designation of the person,
61 entity or agency that will be responsible for the duration of any
62 affordability restrictions, for the administration of the affordability plan
63 and its compliance with the income limits and sale price or rental
64 restrictions of this chapter; (B) an affirmative fair housing marketing
65 plan governing the sale or rental of all dwelling units; (C) a sample
66 calculation of the maximum sales prices or rents of the intended
67 affordable dwelling units; (D) a description of the projected sequence in
68 which, within a set-aside development, the affordable dwelling units
69 will be built and offered for occupancy and the general location of such
70 units within the proposed development; and (E) draft zoning
71 regulations, conditions of approvals, deeds, restrictive covenants or
72 lease provisions that will govern the affordable dwelling units.

73 (2) The commissioner shall, within available appropriations, adopt
74 regulations pursuant to chapter 54 regarding the affordability plan.
75 Such regulations may include additional criteria for preparing an
76 affordability plan and shall include: (A) A formula for determining rent

77 levels and sale prices, including establishing maximum allowable down
78 payments to be used in the calculation of maximum allowable sales
79 prices; (B) a clarification of the costs that are to be included when
80 calculating maximum allowed rents and sale prices; (C) a clarification
81 as to how family size and bedroom counts are to be equated in
82 establishing maximum rental and sale prices for the affordable units;
83 and (D) a listing of the considerations to be included in the computation
84 of income under this section.

85 (c) Any commission, by regulation, may require that an affordable
86 housing application seeking a change of zone include the submission of
87 a conceptual site plan describing the proposed development's total
88 number of residential units and their arrangement on the property and
89 the proposed development's roads and traffic circulation, sewage
90 disposal and water supply.

91 (d) For any affordable dwelling unit that is rented as part of a set-
92 aside development, if the maximum monthly housing cost, as calculated
93 in accordance with subdivision [(6)] (9) of subsection (a) of this section,
94 would exceed one hundred per cent of the Section 8 fair market rent as
95 determined by the United States Department of Housing and Urban
96 Development, in the case of units set aside for persons and families
97 whose income is less than or equal to sixty per cent of the median
98 income, then such maximum monthly housing cost shall not exceed one
99 hundred per cent of said Section 8 fair market rent. If the maximum
100 monthly housing cost, as calculated in accordance with subdivision [(6)]
101 (9) of subsection (a) of this section, would exceed one hundred twenty
102 per cent of the Section 8 fair market rent, as determined by the United
103 States Department of Housing and Urban Development, in the case of
104 units set aside for persons and families whose income is less than or
105 equal to eighty per cent of the median income, then such maximum
106 monthly housing cost shall not exceed one hundred twenty per cent of
107 such Section 8 fair market rent.

108 (e) For any affordable dwelling unit that is rented [in order] to comply

109 with the requirements of a set-aside development, no person shall
110 impose on a prospective tenant who is receiving governmental rental
111 assistance a maximum percentage-of-income-for-housing requirement
112 that is more restrictive than the requirement, if any, imposed by such
113 governmental assistance program.

114 (f) Except as provided in subsections (k) and (l) of this section, any
115 person whose affordable housing application is denied, or is approved
116 with restrictions [which] that have a substantial adverse impact on the
117 viability of the affordable housing development or the degree of
118 affordability of the affordable dwelling units in a set-aside
119 development, may appeal such decision pursuant to the procedures of
120 this section. Such appeal shall be filed within the time period for filing
121 appeals as set forth in section 8-8, 8-9, 8-28 or 8-30a, as applicable, and
122 shall be made returnable to the superior court for the judicial district
123 where the real property which is the subject of the application is located.
124 Affordable housing appeals, including pretrial motions, shall be heard
125 by a judge assigned by the Chief Court Administrator to hear such
126 appeals. To the extent practicable, efforts shall be made to assign such
127 cases to a small number of judges, sitting in geographically diverse parts
128 of the state, so that a consistent body of expertise can be developed.
129 Unless otherwise ordered by the Chief Court Administrator, such
130 appeals, including pretrial motions, shall be heard by such assigned
131 judges in the judicial district in which such judge is sitting. Appeals
132 taken pursuant to this subsection shall be privileged cases to be heard
133 by the court as soon after the return day as is practicable. Except as
134 otherwise provided in this section, appeals involving an affordable
135 housing application shall proceed in conformance with the provisions
136 of section 8-8, 8-9, 8-28 or 8-30a, as applicable.

137 (g) Upon an appeal taken under subsection (f) of this section, the
138 burden shall be on the commission to prove, based upon the evidence
139 in the record compiled before such commission, that the decision from
140 which such appeal is taken and the reasons cited for such decision are
141 supported by sufficient evidence in the record. The commission shall

142 also have the burden to prove, based upon the evidence in the record
143 compiled before such commission, that (1) (A) the decision is necessary
144 to protect substantial public interests in health, safety or other matters
145 which the commission may legally consider; (B) such public interests
146 clearly outweigh the need for affordable housing; and (C) such public
147 interests cannot be protected by reasonable changes to the affordable
148 housing development, or (2) (A) the application which was the subject
149 of the decision from which such appeal was taken would locate
150 affordable housing in an area which is zoned for industrial use and
151 which does not permit residential uses; and (B) the development is not
152 assisted housing. If the commission does not satisfy its burden of proof
153 under this subsection, the court shall wholly or partly revise, modify,
154 remand or reverse the decision from which the appeal was taken in a
155 manner consistent with the evidence in the record before it.

156 (h) Following a decision by a commission to reject an affordable
157 housing application or to approve an application with restrictions
158 [which] that have a substantial adverse impact on the viability of the
159 affordable housing development or the degree of affordability of the
160 affordable dwelling units, the applicant may, within the period for filing
161 an appeal of such decision, submit to the commission a proposed
162 modification of its proposal responding to some or all of the objections
163 or restrictions articulated by the commission, which shall be treated as
164 an amendment to the original proposal. The day of receipt of such a
165 modification shall be determined in the same manner as the day of
166 receipt is determined for an original application. The filing of such a
167 proposed modification shall stay the period for filing an appeal from the
168 decision of the commission on the original application. The commission
169 shall hold a public hearing on the proposed modification if it held a
170 public hearing on the original application and may hold a public
171 hearing on the proposed modification if it did not hold a public hearing
172 on the original application. The commission shall render a decision on
173 the proposed modification not later than sixty-five days after the receipt
174 of such proposed modification, provided, if, in connection with a
175 modification submitted under this subsection, the applicant applies for

176 a permit for an activity regulated pursuant to sections 22a-36 to 22a-45,
177 inclusive, and the time for a decision by the commission on such
178 modification under this subsection would lapse prior to the thirty-fifth
179 day after a decision by an inland wetlands and watercourses agency, the
180 time period for decision by the commission on the modification under
181 this subsection shall be extended to thirty-five days after the decision of
182 such agency. The commission shall issue notice of its decision as
183 provided by law. Failure of the commission to render a decision within
184 said sixty-five days or subsequent extension period permitted by this
185 subsection shall constitute a rejection of the proposed modification.
186 Within the time period for filing an appeal on the proposed modification
187 as set forth in section 8-8, 8-9, 8-28 or 8-30a, as applicable, the applicant
188 may appeal the commission's decision on the original application and
189 the proposed modification in the manner set forth in this section.
190 Nothing in this subsection shall be construed to limit the right of an
191 applicant to appeal the original decision of the commission in the
192 manner set forth in this section without submitting a proposed
193 modification or to limit the issues which may be raised in any appeal
194 under this section.

195 (i) Nothing in this section shall be deemed to preclude any right of
196 appeal under the provisions of section 8-8, 8-9, 8-28 or 8-30a.

197 (j) A commission or its designated authority shall have, with respect
198 to compliance of an affordable housing development with the
199 provisions of this chapter, the same powers and remedies provided to
200 commissions by section 8-12.

201 (k) The affordable housing appeals procedure established under this
202 section shall not be available if the real property which is the subject of
203 the application is located in a municipality in which at least ten per cent
204 of all dwelling units in the municipality are (1) assisted housing, (2)
205 currently financed by Connecticut Housing Finance Authority
206 mortgages, (3) subject to binding recorded deeds containing covenants
207 or restrictions which require that such dwelling units be sold or rented

208 at, or below, prices which will preserve the units as housing for which
209 persons and families pay thirty per cent or less of income, where such
210 income is less than or equal to eighty per cent of the median income, (4)
211 not deed restricted, but for which a projected loan amount equal to the
212 appraised value of each such dwelling unit, as determined by the local
213 tax assessor for the current grand list year, combined with the average
214 prime offer rate, would result in a monthly mortgage payment not
215 greater than thirty per cent of the annual income of an individual or
216 family, provided (A) the income of such individual or family is not
217 greater than eighty per cent of the median income, and (B) such
218 mortgage payment is calculated on the basis of equal monthly principal
219 and interest installments for the duration of a thirty-year fixed rate
220 mortgage, (5) mobile manufactured homes located in mobile
221 manufactured home parks or legally approved accessory apartments,
222 which homes or apartments are subject to binding recorded deeds
223 containing covenants or restrictions which require that such dwelling
224 units be sold or rented at, or below, prices which will preserve the units
225 as housing for which, for a period of not less than ten years, persons and
226 families pay thirty per cent or less of income, where such income is less
227 than or equal to eighty per cent of the median income, or [(5)] (6) mobile
228 manufactured homes located in resident-owned mobile manufactured
229 home parks. For the purposes of calculating the total number of
230 dwelling units in a municipality, accessory apartments built or
231 permitted after January 1, 2022, but that are not described in subdivision
232 [(4)] (5) of this subsection, shall not be counted toward such total
233 number. The municipalities meeting the criteria set forth in this
234 subsection shall be listed in the report submitted under section 8-37qqq.
235 As used in this subsection, "accessory apartment" has the same meaning
236 as provided in section 8-1a, and "resident-owned mobile manufactured
237 home park" means a mobile manufactured home park consisting of
238 mobile manufactured homes located on land that is deed restricted, and,
239 at the time of issuance of a loan for the purchase of such land, such loan
240 required seventy-five per cent of the units to be leased to persons with
241 incomes equal to or less than eighty per cent of the median income, and

242 either (A) forty per cent of said seventy-five per cent to be leased to
 243 persons with incomes equal to or less than sixty per cent of the median
 244 income, or (B) twenty per cent of said seventy-five per cent to be leased
 245 to persons with incomes equal to or less than fifty per cent of the median
 246 income.

247 Sec. 2. Subsection (f) of section 8-2o of the general statutes is repealed
 248 and the following is substituted in lieu thereof (*Effective October 1, 2023*):

249 (f) Notwithstanding the provisions of subsections (a) to (d), inclusive,
 250 of this section, the zoning commission or combined planning and
 251 zoning commission, as applicable, of a municipality, by a two-thirds
 252 vote, may initiate the process by which such municipality opts out of
 253 the provisions of said subsections regarding allowance of accessory
 254 apartments, provided such commission: (1) First holds a public hearing
 255 in accordance with the provisions of section 8-7d on such proposed opt-
 256 out, (2) affirmatively decides to opt out of the provisions of said
 257 subsections within the period of time permitted under section 8-7d, (3)
 258 states upon its records the reasons for such decision, and (4) publishes
 259 notice of such decision in a newspaper having a substantial circulation
 260 in the municipality not later than fifteen days after such decision has
 261 been rendered. Thereafter, the municipality's legislative body or, in a
 262 municipality where the legislative body is a town meeting, its board of
 263 selectmen, by a two-thirds vote, may complete the process by which
 264 such municipality opts out of the provisions of subsections (a) to (d),
 265 inclusive, of this section. [, except that, on and after January 1, 2023, no
 266 municipality may opt out of the provisions of said subsections.]

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2023	8-30g(a) to (k)
Sec. 2	October 1, 2023	8-2o(f)

Statement of Purpose:

To include dwelling units that meet certain income requirements into the calculation of the ten per cent threshold for the affordable housing appeals procedure and to remove the deadline for any municipality to opt-out of the as-of-right allowance of accessory apartments.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

Co-Sponsors: REP. CANDELORA V., 86th Dist.; REP. O'DEA, 125th Dist.
REP. RUTIGLIANO, 123rd Dist.; REP. ACKERT, 8th Dist.
REP. PERILLO J., 113th Dist.; REP. ZUPKUS, 89th Dist.
REP. ZAWISTOWSKI, 61st Dist.; REP. CARNEY, 23rd Dist.
REP. ANDERSON, 62nd Dist.; REP. NUCCIO, 53rd Dist.

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