HINCKLEY ALLEN

Opinion: Connecticut's New Housing Law:

The Good, The Confusing, and The Dysfunctional

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Part One: The Good, The Confusing, and The Dysfunctional

CONNECTICUT'S NEW HOUSING LAW

This three-part series summarizes "November Special Session Public Act 25-1," Connecticut's new housing law, commonly referred to as HB 8002.

This first of three pieces reviews what the Act does not do; its most beneficial provisions (most of which are not directly related to housing production); and two important study committees from which the Act requires reports in early 2026 that have potential to improve or obstruct affordable housing.

Part Two will discuss the new Council on Housing Development and the Act's housing programs: parking rules; transit-oriented communities; conversions of commercial and mixed-use zones to middle housing; priority housing development zones; Department of Housing-led developments; and tweaks to § 8-30g's moratorium rules.

Part Three will address the Act's new regime of municipal and regional housing growth plans and opportunities for developers and the General Assembly in 2026.

As we explain below, overall, the Act has many good provisions, but also too many sections that are confusing, and some that conflict with existing law, which will likely be dysfunctional in practice.

What The Act Does Not Do

The Act does not tinker with, much less overhaul, the core problem of our land use system: 169 towns, each exercising the broad discretionary powers of General Statutes § 8-2, the Zoning Enabling Act. In September 2024, Tim wrote about how our system preserves the parochial status quo of exclusionary regulation and economic segregation. He stated that the legislature should recognize how towns are using their land use authority to prevent lower-cost housing production; devise a list of powers and procedures to be purged or pruned; and then summon the political will to revise the state-local balance of delegated authority. The new Act does little to address this goal and, in fact, creates more roadblocks to progress. The Act refers to financial incentives to amend zoning regulations, but those "carrots" are not yet spelled out, and the Act otherwise contains no zoning regulation revision mandates. There are no bold initiatives similar to what other states have adopted in recent years.

Continuing a statewide trend years in the making, the Act reconfirms a central role for General Statutes § 8-30g, the affordable housing statute, not only by leaving it substantively unchanged but also by adopting, in the new housing programs, several measures that utilize standards taken from § 8-30g, such as specifying when land use commissions must demonstrate a public health or safety basis for denying permits (the § 8-30g standard), rather than the traditional standard of "health, safety, and the general welfare." The new Act recognizes that § 8-30g is now embedded in dozens of local housing programs and is here to stay.

The Act incentivizes municipalities to work with the Connecticut Municipal Development Authority (CMDA), created in 2019, funded in 2024, and now up-and-running.

That program encourages development agreements that will commit towns to affordable and multi-family development, mainly in transit-oriented locations. However, the Act creates several new housing programs that will ostensibly compete and maybe conflict with the CMDA program, and with little explanation as to how the revised package of programs should work together.

A Non-Transparent Process That Led To Poor Drafting

Simply put, the new Act is replete with provisions that are confusing at best and others that, while relatively clear, display misunderstandings of existing Connecticut land use law and establish new standards and procedures that will conflict with existing statutes, case law, and practice.

How did this happen? After the proposed text of the new Act was introduced at the November 2025 special session as House Bill 8002 (the bill vetoed by the Governor in June 2025 was House Bill 5002), the proponents tried to justify its immediate adoption, without public hearings or time for vetting the text, by explaining that the legislature had held numerous hearings on an array of housing issues during the 2025 regular session. But this fact does not justify House Bill 8002 being made public on November 7 and then, under an "emergency certification," voted on just days later.

Although no one in leadership has said so, the apparent emergency was avoiding giving opponents of the bill time to pick at it line by line, section by section. Also, H.B. 8002, 53 sections and 107 pages, was not introduced as an amendment to H.B. 5002 but as a brand new document, such that comparing H.B. 8002 to H.B. 5002, much less in five days, was essentially impossible. So, the new Act did not receive any public hearings or review of its wording. As a result, the Act contains errors, misstatements, and several provisions that conflict with existing law and create impossible standards.

We intend no disrespect to the drafters. They had a tough job. Our point is that the final product could have been vastly improved with time for scrutiny.

Program Notes

The good parts of the Act are mainly the holdovers from H.B. 5002-provisions that were not the reasons for the Governor's June 2025 veto. These provisions recognize that our affordable housing crisis has many facets and requires multiple approaches.

As you are reading this, most of the Act's provisions are already in effect, adopted "from passage" on November 26 or effective January 1, 2026. Effective from passage are the sections creating the new Council on Housing Development; committees to study the § 8-30g Ten Percent List and sewer/wastewater policies; a pilot program of mobile showers and laundry facilities for the homeless; and priority access to environmental remediation funding for municipalities that adopt zoning regulations allowing conversion of commercial buildings to residential use. The only provisions delayed to July 1, 2026, are revisions to General Statutes § 8-2s regarding conversion of land zoned commercial or mixed-use to "transit community middle housing," and the new standards for parking in residential developments.

On the other hand, a defining feature of the new Act is its extended timelines, in the form of far-out or unstated deadlines. Future guidance on multiple matters will be issued by the Office of Policy and Management (OPM) and the Department of Housing (DOH). The all-important housing growth plans will not be filed until 2028 and 2029.

Another notable point is the dispersion of authority over housing development to OPM instead of DOH. It is hard to discern the basis for this shift, but going forward, OPM will be more of a major player in affordable housing development than previously.

This feature is also curious because, of course, a central theme of the Governor's office in 2025 was that municipalities, not the state, should "take the lead" in planning and zoning for affordable housing. In fact, while the Act does not force municipalities to adopt zoning regulations, overall, the Act creates pervasive state agency oversight of the supposedly voluntary local and regional programs it introduces.

When reviewing our summaries below, the reader should pay attention to several provisions that address just "housing," not specifically subsidized or affordable housing. This may be a subtle shift forced by opponents of the prior bill's tight focus on affordable units.

The Act contains 53 sections, but because most are now in effect and being codified into the General Statutes, we have included only minimal references to sections and subsections.

Finally, please bear in mind the variety of audiences we are addressing in these articles. Many in local government and the development community need to understand the at-times-eyewatering procedural details, so we have tried to strike a balance between being complete and accurate but not going overboard with minutia.

Changes To Existing Housing Programs

The Act makes these improvements to existing programs:

- For the homeless population, creating a two-year pilot program of mobile vans with showers and health care service; and a permanent ban on "hostile architecture," meaning physical obstacles that prevent the homeless from sitting or resting (Sections 23 and 26);
- Modifying of rental assistance and voucher programs, including allowing non-profit entities to administer such programs and expanding the geographic areas where households use financial assistance (Section 28, 29);
- Additional protections of renters and tenants in the eviction process (Sections 37-39);
- Requiring about 30 cities and towns with a population between 15,000 and 25,000 to establish a fair rent commission or join a multi-town or regional commission (Section 35);
- Extending existing protection of mobile manufactured homes and mobile home parks from zoning regulations that treat them differently from single-family, multi-family, and cluster housing, to homes narrower than 22 feet wide, provided that the home is built in compliance with federal safety standards (Section 18);
- Banning the use of certain formulas and algorithms to calculate or set rents (Section 32);
- Requiring additional reporting by municipal housing authorities about such matters as rental prices in relation to household income (Section 44); and
- Authorizing the Attorney General's office to enforce the state's fair housing and anti-discrimination laws in the same manner as the Commission on Human Rights and Opportunities (CHRO) (Section 31).

Financial Programs

The Act's primary financial incentive is a grants-in-aid program administered by OPM to assist municipalities with costs of housing-related construction and infrastructure (Section 15). However, no amount of funding has been specified, and OPM will issue details at some unspecified later time.

To be eligible for grants, a municipality must be in compliance with its housing growth plan or its regional council plan (to be explained in Part Three); have in place a development agreement with the Connecticut Municipal Development Authority; or "meet additional criteria" to be developed by OPM.

Every good Act needs a "sleeper" provision, a section that seems innocuous but could have an outsized impact. The Act adds to the public-school construction cost reimbursement program a five percentage point increase if the municipality is in compliance with its municipal or regional housing growth plan; has qualified as a transit-oriented community under the Act; or has entered into a development agreement with the CMDA. If the school construction cost is, for example, $50 million, five percent could be a substantial financial incentive (Section 46).

In addition, the Act contains:

- A modest income tax credit, based on household income limits, for first-time home buyers (Sections 1-3);
- Expansion of CHFA's Smart Rate Pilot Interest Rate Reduction Program, to provide additional help to mortgage borrowers (Section 36);
- Additional funds for regional planning agencies to help them provide technical help with planning, development, stormwater control, and flood management (Section 30);
- Direction to the DOH to establish an Affordable Housing Real Estate Investment Trust pilot program, to provide grants to municipalities with a population of 130,000 to 140,000, which apparently means New Haven and Stamford (Section 43);
- Authorization to OPM to provide grants to regional councils of government to support public transit, bicycle, and pedestrian infrastructure (Section 25);
- Direction to the DOH to establish a program by which union pension funds may "coinvest" in affordable housing development and thereby "create employment opportunities in the construction industry" (Section 34); and
- DOH also is given new authority to make grants to municipalities of less than 50,000 for development middle housing (Section 27).

Land Use Procedural Reform

The Act eliminates the two-thirds "supermajority vote" provision that kicks in if adjacent property owners file a so-called "protest petition" to oppose a zone change application (these petitions are an antiquated exclusionary zoning tool), in favor of a simple majority vote (as is otherwise now required of all zone change applications), and an increase in the minimum amount of land abutting the zone change that the protest petitioners must own in order to file, from 20 to 50 percent (Section 24). The Act also clarifies which municipal body can vote to opt out of the 2021 standards for accessory apartments (Section 22).

Further Study

The Act establishes two committees that will file reports in the 2026 legislative session and could be very important to affordable housing. The first is an interagency task force to study the State's wastewater and sewer programs and the powers of municipal sewer commissions (Section 33).

Second is a committee to study the § 8-30g "Ten Percent List," by which DOH counts each municipality's total affordable housing stock and exempts from § 8-30g those with more than ten percent affordable (Section 42).

It seems inevitable that every municipality that wants to be shielded from § 8-30g application without having to produce any new housing will descend on this committee and argue that the current system has "failed" and/or is unfair. The committee should resist this pressure.

The Ten Percent List was established in the original 1989 § 8-30g legislation to exempt about 30 of our 169 towns that had the highest percentages of existing affordable, deed-restricted, or subsidized units. The ten percent threshold is, of course, a policy-driven number, but it has worked as intended for 35 years. This committee should dismiss the naysayers who assert that other towns, not theirs, should shoulder the responsibility for affordable housing.

Part Two: The New Act's Housing Programs

CONNECTICUT'S NEW HOUSING LAW

This is Part Two of a three-part series exploring elements of Connecticut's recently adopted housing law, the "November Special Session Public Act 25-1," commonly referred to as HB 8002.

Here we review the new Council on Housing Development; revised parking rules; conversion of commercial and mixed-use zones to middle housing; transit-oriented development; priority housing development zones; and the Connecticut Department of Housing's new role as a developer as well as funder.

Council on Housing Development

Critics of the new Act have already started to bemoan a new housing bureaucracy created by the Act, and the new Council on Housing Development is one of the focal points (Section 14).

The Council will have 18 members, starting with the Governor, the State's Responsible Growth Coordinator (an Office of Policy & Management employee), the OPM Secretary, the Department of Housing Commissioner, the Commissioners of Environmental Protection and Economic Development, the Connecticut Housing Finance Authority Director, the Connecticut Municipal Development Authority Director, and legislative leaders. The President of the Senate and Speaker of the House act as chairs.

The Council's stated duty is to advise the Responsible Growth Coordinator about regulations and guidelines, funding decisions, and approving municipal and regional housing growth programs. Other roles assigned by the Act include acting as a board of appeals if the OPM Secretary rejects a housing growth plan or regulations drafted to carry out other Act initiatives.

Again, candidly, it is difficult to envision the members of this Council carrying out meaningful reviews of housing growth plans and proposed zoning regulations. Moreover, if the Council evolves into an active, hands-on housing agency, the Act will be a far cry from "towns take the lead" in promoting affordable housing production.

Parking

Excessive parking requirements are a well-known exclusionary zoning technique.

Parking spaces consume land and therefore restrict density. The Act modifies the power of local land use commissions to require parking spaces and deny applications based on parking (Sections 18-21).

A confusing feature of the parking sections is that although they focus on required parking spaces in residential development, a traditional zoning topic, the Act toggles between "zoning commissions" and "municipality" as the implementer, for no apparent reason.

First, the Act states that no commission shall reject any application for residential development "solely on the basis" that it fails to meet off-street parking requirements, unless the commission or its zoning officer finds that a lack of parking "will have a specific adverse impact on public health or safety that cannot be mitigated through approval conditions. . . ."

But then the Act retreats from this broad statement, providing that "a municipality" may require minimum parking for a residential development of more than sixteen dwelling units, but the developer must be allowed to submit a "parking needs assessment," and the commission or zoning officer – another switchback from municipality– *"shall condition the approval"* on parking not exceeding one space for each studio and one bedroom units and two spaces for all larger units, *or* the number of spaces recommended by the needs assessment, "whichever results in the least required number" of off-street spaces. An implication is that a commission may not deny any development plan of less than 16 units based on inadequate parking.

The Act then explains the required elements of a parking needs assessment: existing available spaces, public transit options, projected needs, and any other relevant studies.

The Act allows a municipality to adopt one or two "traffic mitigation districts," not more than four percent of the total land area, where minimum spaces can be specified for residential developments of *fewer than* 16 units, provided that the needs assessment process described above must be an administrative option. The purpose of this provision is not clear.

In addition, the Act extends General Statutes § 8-2c, which allows payments of a fee-in-lieu of parking requirements, to any residential or mixed-use development with sixteen or more units, "or any commercial development."

In one of its few direct mandates regarding zoning regulations, the Act repeals the 2021 provision allowing an opt-out from parking standards stated in the Zoning Enabling Act and thus establishes the parking rules outlined above as the required statewide system.

Transit-Oriented Communities and Developments

Another program in the new Act establishes standards and incentives (Sections 11, 12) for "qualifying transit-oriented communities," which are municipalities that are home to rapid transit facilities or regular bus service, or border such a municipality. (We note that while train stations are essentially fixed for the long term, bus service is easily changeable.) A qualifying municipality may establish, with OPM approval (based on a lengthy list of considerations), a "transit-oriented district," which must allow *as-of-right*:

- Transit community "middle housing" development, defined as nine or fewer units;
- Developments of ten or more units that meet § 8-30g set-aside (30 percent) affordable standards; and
- Developments on land owned by the municipality or its public housing authority, "any not-for-profit entity" or any "religious organization" as defined in General Statutes § 49-31k.

All units in these developments must remain affordable for at least 40 years at rents or prices equivalent to not more than 30 percent of the annual income of households earning 60 percent or less of the statewide or area median income, whichever is less. It should be noted that this income qualification standard is close but not identical to § 8-30g, creating another point of confusion.

A qualifying transit-oriented community must also allow, as-of-right, the conversion of any residential or commercial development into any of the three types of developments listed above. "As-of-right" means approvable based on objective regulatory standards rather than a discretionary permit, and without a public hearing.

A notable feature of this section is that it directs the transit-oriented regulations to allow § 8-30g set-aside developments of ten or more units to be approved as-of-right, which presumably means without the zoning commission evaluating whether the development will create a substantial public health or safety concern that clearly outweighs affordable housing need.

Developments of ten or more dwelling units may allow "ground-level commercial uses," excepting developments by religious organizations (we assume because religious organizations cannot claim commercial use as part of their mission).

Developments of more than ten units that are not allowed as-of-right must still meet affordable percentage requirements stated in the "Connecticut Housing Finance Authority's Housing Needs Assessment." This introduces yet another unclear metric.

We believe there is a significant typographical error in the Act's § 11(i) on page 48, which appears to say that a qualifying transit-oriented community will be eligible for additional OPM funding if it adopts "zoning criteria" whose affordability rules exceed the CHFA Needs Assessment, develop public land or public housing, or encourage homeownership. Section (i) and (j)(2) refers back to subsection (h), which should be subsection (g).

Following a pattern in the Act that, in overview, undermines the enforceability of proposals, the transit-oriented provision ends with a statement that communities seeking OPM approval of transit-oriented districts may seek exemptions or may opt out of the program entirely.

Middle Housing and Mixed-Use Development

Separate from transit-oriented districts, the Act (Section 16) amends General Statutes § 8-2s by requiring each municipality's zoning regulations to allow, by a "summary review" process, transit community middle housing development or "mixed-use development" on "any lot that is zoned for commercial or mixed-use development." In addition, the "TOD" regulation "may allow" transit community middle housing "on any lot that allows for residential use subject only to summary review."

In other words, the Act, in another confusing twist, allows transit-oriented middle housing as a development type on any lot zoned commercial or mixed-use, even if not located within a transit-oriented district.

"Summary review" means that a zoning application is approvable based on standards in the regulations, such as setbacks, lot size, and building frontage, without a public hearing and without "discretionary zoning action" such as a variance, special permit, or special exception.

However, the commission or zoning officer must make "a determination that a site plan conforms to the regulations" and "public health and safety will not be substantially impacted...." Two pertinent questions about this provision will be whether the requirement of conformance to the zoning regulations could essentially nullify the goal of a non-discretionary approval and whether a public health and safety determination can be made without a public hearing.

While the more streamlined approval process is enticing, a transit community middle housing development is limited to two to nine units, which, in our experience, is well below what most developers would consider economically viable.

Also, the phrases "zoned for commercial use" or for "mixed-use development" are unclear at best. "Commercial" is a term of art. If a zone allows some uses that could be considered commercial but the zone has some other name, is it a "commercial zone"?

And "mixed-use" is not defined. Moreover, does the final sentence about "a residential use subject only to summary review" refer to the middle housing/commercial/mixed use or the residential use? This is another example of unclear drafting that vetting could have resolved.

Priority Housing Development Zones (PHDZ)

The Act contains a voluntary program, to be administered by the Department of Housing, for "priority housing development zones" (Sections 8-10). Such zones must:

- Be located within an existing "residential or commercial district" that is "suitable" for the type of development the PHDZ program allows;
- Be consistent with the State plan of conservation and development; and
- Encompass no less than ten percent of the "developable land" within the municipality.

The zone's regulations must:

- Be consistent with the municipal or regional housing growth plan;
- Be "likely to increase production of new dwelling units" (note "affordable" not specified);
- As required by General Statutes §§ 8-2 (b)(4-6), provide housing opportunities including multi family for all residents of the municipality and the region"; promote housing choice and economic diversity; and "expressly allow the development of housing" identified in the State's "consolidated" housing plan and the State Plan of Conservation and Development";
- Permit multi family housing "as of right;"
- Allow single family houses at a minimum of four units per acre, townhouses and duplexes at six per acre, and multi-family at ten per acre; and
- Require only a site plan or subdivision approval, no special permit or special exceptions.

However, a zoning commission may "modify, waive, or eliminate dimensional standards" such as building height, setbacks, lot coverage, parking ratios, and road standards to support the minimum densities.

PHDZ regulations may allow a mix of business, commercial, and non-residential uses if such uses are "consistent" with the as-of-right residential uses and required densities.

A PHDZ may overlay a historic district unless the historic district's requirements render the PHDZ "out of compliance" with what PHDZs require. The Act does not state how this relates to the historic district "certificate of appropriateness" requirement.

A PHDZ must be approved by the Commissioner of Housing, who may, one year later, rescind the approval based on a "lack of building permits or other indications of progress toward construction of dwelling units. . . ."

The PHDZ rules are borrowed in part from the Incentive Housing Zone program adopted in 2007 and still on the books at General Statutes §§ 8-13m to 8-13x. That program largely fizzled in the 2008-2011 recession when the General Assembly declined to appropriate financial incentives that were a quid pro *quo* for amending regulations.

As will be discussed in Part Three of this series, under Housing Growth Plans, the requirement that PHDZ regulations must be "consistent" with municipal or regional growth plans is problematic because the Act does not contemplate the adoption of housing growth plans until 2028 and 2029. In addition, the ability of zoning commissions to modify or eliminate enacted regulations, and of the Commissioner of Housing to rescind a PHZD approval after one year based on lack of progress, will have a chilling effect on use of this program.

Respectfully, it is difficult to envision a municipality utilizing this program.

Department of Housing Powers

The Act (Section 48) grants the Department of Housing a package of new powers by which DOH may not only fund development but act as developer and manager, akin to what public housing authorities may do.

DOH must report its activities under this new program to the new Council on Housing Development. It is not clear if this section replaces the existing statutes regarding the Connecticut Housing Authority, General Statutes §§8-119ZZ to 8-122.

Tweaks to § 8-30g Moratorium Rules

The Act slightly modifies the point system by which municipalities subject to § 8-30g may achieve a four-year moratorium (Sections 16, 41).

It awards an additional one-quarter (0.25) point for units in a transit community middle housing development. If a municipality has adopted a priority housing development zone and received DOH approval of that zone, its moratorium points threshold is reduced from the greater of two percent/75 points to the greater of 1.75 percent or 65 points.

In the case of a municipality that has adopted a municipal or regional housing growth plan, has more than 20,000 dwelling units, and has previously obtained a moratorium, its required points for a next moratorium are reduced to 1.5 percent of its total housing units, with no alternative minimum. Units constructed by or in conjunction with a housing authority achieve an additional 0.25 points per unit.

Part Three: CT Housing Growth Plans, Convoluted Regs And Opportunities For 2026

CONNECTICUT'S NEW HOUSING LAW

This third and final article in this series reviews a centerpiece element of the "November Special Session Public Act 25-1," Connecticut's new housing law, commonly referred to as HB 8002. (Here are Parts One and Two.)

It looks at the law's treatment of municipal and regional housing growth plans, including what happened to H.B. 5002's "fair share" proposal; opportunities for development; and an agenda for the General Assembly in 2026.

At the outset we wish to be clear that as attorneys we represent affordable housing developers, proponents, and advocates who seek to create more affordable housing. However, in ways explained below, we believe the new Act will make affordable housing production more difficult, and thus the General Assembly in 2026 should review and revise the Act to at least remove or ameliorate the obstacles, and otherwise remove exclusionary barriers and positively reform local zoning.

Municipal and Regional Housing Growth Plans

The new Act (Sections 4-7) introduces "housing growth plans," adopted by either a municipality or regional council of governments, of which there are nine: Capitol Region, Northeastern Connecticut, Lower Connecticut River Valley, Western Connecticut, Northwest Hills, Naugatuck Valley, Greater Bridgeport, South Central, and Southeastern.

The Act repeals General Statutes § 8-30j, the part of Public Act 21-29 that mandated every municipality to prepare and file an affordable housing plan by June 2022. Nearly every municipality did so during 2021-2023.

Section 8-30j was less than effective because it only required municipalities to prepare a plan and file it with OPM but gave little guidance as to content or standards. The new Act, however, contains only vague guidance in the nature of aspirations, imposes a complicated review process with lengthy timelines, and has no enforcement mechanisms or penalties. (Tim co-chaired a statewide Working Group in 2022-2023 that reviewed and evaluated these plans and, in a February 2023 report to the legislature, made substantive and specific recommendations for improvements in the future plans.)

The 2021-2023 plans were supposed to be valid for at least five years. The time, effort, and expense that dozens of municipalities invested in preparing those reports are now superseded. The new Act makes no mention of building upon the 2021-2023 reports. This is at least illogical, because when municipalities prepare the growth plans mandated by the new Act, a natural starting point should be to use what they produced just two or three years ago. The new Act seems to direct municipalities to start from scratch.

The overall housing growth plan process begins with OPM, by December 2026, preparing a statewide housing needs assessment. By June 2027, each regional council must prepare a regional housing needs assessment that includes a "recommended affordable housing goal for each member municipality." The methodology must include:

- Federal Fair Housing Act "affirmatively furthering" obligation (outreach to those most in need of housing);
- "Appropriate regional metrics" and cost-burden indicators;
- "Appropriate factors for fairly allocating need among municipalities, including proximity to transportation, commercial and industrial zones, employment opportunities; available developable land; and municipality's share of multi-family housing stock"; and
- Adjustments based on income and poverty levels.

Each regional council submits its assessment and recommends the municipal affordable housing goals to OPM, which may not reject them "solely on the basis that such needs assessment or goal may result in a greater number of dwelling units being developed than [OPM] deems adequate." (We think this means OPM cannot reject the goal because OPM thinks it is too high, but the wording is not clear.) No affordable housing goal may exceed 20 percent of the "occupied dwelling units in such municipality."

The Act then requires all municipalities in the Capitol, Northeast, Lower Connecticut River Valley, Northwest Hills, and Southeastern Connecticut regions to submit their housing growth plans to OPM by June 2028; and those in the South Central, Greater Bridgeport, Naugatuck Valley, and Western regions to submit by June 2029, and every five years thereafter.

All plans must state "housing growth policies," which are programs and practices designed to "reduce or remove regulatory constraints on the construction, rehabilitation, repair or maintenance of affordable housing units, such as zoning regulations amendments, fee waivers, tax fixing agreements, tax abatements, and expedited approvals"; or "actions intended to promote" affordable units such as sewer infrastructure, donations of municipal land, and "agreements with developers" for developments that include affordable units. (This provision says "or" but appears to mean "and".)

Every plan "shall reduce specific regulatory barriers to the development of dwelling units" and "promote additional dwelling units. . . ." In addition, the plans must:

- Identify specific zones or parcels where affordable housing units that will meet the municipality affordable housing goal can be approved by "summary review";
- Promote affordable housing units that will be subject to a 40 year restriction that will preserve the units for "persons and families" that earn 30 percent, 50 percent, or 80 percent or less of the statewide or area median income;
- Set forth "strategies" for diversity of unit types, and accessibility in housing for the disabled;
- Explain how the plan addresses "significant disparities in housing needs" and implements the "affirmatively furthering" purposes of the federal Fair Housing Act;
- Contain an inventory of "developable land";
- Identify infrastructure needs, including sewer capacity, to achieve the affordable housing goal; and
- Contain an implementation schedule.

The 20 municipalities with the lowest "adjusted equalized net grant list per capita" have a different set of criteria for their plans. They must prioritize preservation of existing affordable units; identify policies that will promote new affordable units "without displacing existing residents"; and identify infrastructure needs of existing residents.

If a municipality proceeds with its own housing growth plan, instead of the regional plan, then at least 90 days before the municipal plan is due to OPM (June 2028 or June 2029, as listed above), it must submit its plan to its regional council, which may propose amendments within 60 days. If the municipality rejects any proposed amendment, it must provide a written explanation to the council. The municipality then submits its plan to OPM, which has 120 days to review and accept or reject.

If OPM rejects the plan, the municipality must submit its plan to the new Council on Housing Development, which must provide written notice, reasons, and needed amendments if it denies. The municipality can then resubmit to the Council within 30 days.

If a municipal plan is approved, the municipality must submit an annual progress report. OPM must publish guidance for such annual reports by March 2026.

An approved plan establishes eligibility for financial awards called "grants-in-aid," to assist with "construction, improvement, or expansion of public infrastructure." Grants are based on demonstrated progress" toward the plan's "housing growth policies and affordable housing goal."

If a municipality fails to submit a plan within the required time frame, the chief elected officer must give OPM a filing date not more than 30 days out, and the municipality will be ineligible to apply for a four-year moratorium from § 8-30g applications until it files.

Candidly, it is hard to imagine a more convoluted set of review and approval procedures than those listed above, or a more overwhelming task for OPM than providing a meaningful review of 80-plus housing growth plans in 2028 and 2029. The Act's requirements for these plans include both vaguely stated aspirations, yet direction to specify steps zone-by-zone, parcel by parcel. How will OPM assess the compliance and details? If it approves all or most plans, it will be seen as a mere rubber stamp, and if it rejects a slew of submissions, it and the legislature will be criticized for not providing adequate guidance.

Moreover, unless we are missing something, the proposed plan preparation, review and approval process contains an impossibility, because it specifies that every municipality must decide within 30 days of receiving its affordable housing goal (June 2027 deadline) whether it will adopt the *regional* council's housing growth plan-but those plans are not even due to be prepared and filed until June 2028 and 2029. Again, this is an example of an apparent drafting error that scrutiny could have avoided.

But on top of this procedural morass, the Act spells out four substantive criteria for new municipal *and* regional housing growth plans that conflict with existing law and are destined to be dysfunctional. The requirements are that every new plan must be "consistent with":

- the municipality's Plan of Conservation and Development (POCD), adopted under General Statutes § 8-23 and prepared every ten years by the planning commission;
- the regional plan of conservation and development, adopted by the regional council within which the municipality is located;

- the State of Plan of Conservation and Development; and
- a "local water pollution control authority's" (a/k/a sewer commission) plan, "if applicable."

How do these requirements conflict with existing law and guarantee dysfunction? Let us count the ways.

For decades, it has been an accepted element of zoning and planning in Connecticut, with narrow exceptions, that municipal plans of development are advisory only as to the adoption of zoning regulations and approval of special permits and site plans.

Our leading land use law treatise, *Connecticut Land Use Law and Practice*, written by former Judge Robert Fuller and now edited by Attorney Dwight Merriam, observes that municipal "POCDs" are "a planning concept. . . not based on existing conditions and zoning but rather a blueprint for recommended future development. . .," and are based on "studies of physical, social, economic, and governmental conditions and trends."

As a result, "in Connecticut, the zoning commission. . . is not controlled by recommendations of the planning commission...." "Connecticut has always maintained the independence of the zoning commission, and periodic attempts by planners and others to give more power to the planning commission at the zoning commission's expense have occurred." It should be noted that while zoning regulation amendments are an ongoing responsibility, POCDs are only revised every ten years.

POCDs are not zoning plans. They are general and aspirational, not site-specific regulatory documents that can or should govern zoning regulation amendments, especially zone-by-zone, parcel-by-parcel plans for affordable units. (That is what the § 8-30j plans were for, before they were repealed.) Thus, the requirement that housing growth plans must be consistent with the municipality's POCD creates a structure and process inconsistent with a basic premise of zoning in Connecticut.

Yet another problem is: suppose wily opponents of affordable housing revise the municipal POCD by stripping out facilitation of affordable housing? Would the municipality then be free under the new Act from having to adopt any new or revised affordable housing zoning regulations? The point is that the requirement of plans being consistent with POCDs is a blueprint for exclusionary zoning.

Finally, as to regional plans, the notion that regional councils of government will be able to mediate disagreements among member towns about affordable housing goals seems unrealistic, yet the new Act requires this.

Which brings us to the requirement of consistency with the State Conservation and Development Policies Plan, 2025-2030, which includes the infamous Locational Guide Map. The "State C and D Plan" serves many useful purposes, providing an updated compilation of statewide development trends and a list of goals to which state agencies should aspire. *But the Plan is not in any way a regulatory document or a land use or site-specific zoning plan.* Its Housing chapter is all of two pages, and contains only a list of general "Targets" with which no one would disagree. Therefore, the new Act's requirement that municipal and regional housing growth plans be consistent with the State Plan is misaligned because the State Plan does not specify land use requirements with which a local or regional housing plan could conform.

Which leads us to ask whether the intent of this consistency requirement is to convert the Locational Guide Map into a type of statewide land use control.

The State Plan and the Map formally apply when a state agency invests more than $200,000 in a "growth-related project," but the Locational Guide Map is a color-coded depiction of the entire state that identifies "Activity Zones" (Major Urban, Regional, Local, Suburban and Rural) and steers state agency actions away from "Conversation Factors" such as wetlands, farmlands, aquifers, "critical habitats," and similar characteristics.

Our concern is that OPM, or affordable housing opponents, will try to use the Locational Guide Map as a statewide zoning map by declaring that multi-family and affordable housing proposed outside an Activity Zone is not consistent with the State Plan.

Our state agencies have tried this before. In 2005, the Department of Energy and Environmental Protection and OPM assembled a plan in which the Locational Guide Map contained three shades of green – vast areas of land in dozens of municipalities – and the state DEEP decreed that it would not grant low interest loans of federal Clean Water Act funds for any proposed sewer extension or expansion that would serve an area colored any shade of green on the Locational Guide Map.

Since, as noted above, sewers are usually essential for multi-family and affordable housing, DEEP essentially installed itself as a statewide multi-family housing supervisor. When this became apparent, housing advocates and the development community convinced the legislature that this was a misuse of the State Plan and Map, and in 2013, the legislature revised both, specifying these documents should govern prioritization of certain state funds, but not be a statewide, top-down land use plan. The new Act appears to reenact the earlier regime.

Yet another dysfunction is the requirement that housing growth plans be consistent with local sewer plans. Under state law, the sole job of water pollution control authorities (sewer commissions) is to manage capacity and engineering in the public sewer system. Our courts have held in several cases that sewer commissions may not use sewers to control or enforce land use and zoning; that is the exclusive purview of the zoning commission. For example, a town may not set parcel-by-parcel sewer gallonage limits as a way to prevent anything other than single-family homes on each parcel.

Like the other three consistency requirements in the new Act, sewer plan consistency is a roadmap for exclusionary land use.

A good example is the fact that the Town of East Lyme recently enacted a three-year moratorium, extendable, on all new sewer connections that will use more than 20,000 gallons per day. This effectively prohibits anything other than small residential development until at least 2028. So does East Lyme now have no obligation to facilitate multi-family housing, because its sewer commission has adopted a plan blocking such housing for the foreseeable future? Is this what the Governor and the General Assembly had in mind when they framed the new Act around the phrase "Towns take the lead"?

Another important question is how drafters of housing growth plans will determine whether their plan is consistent with all four touchstones, and what will they do if the state and local POCDs and sewer plans conflict with each other, which is highly likely?

In summary, the sections of the new Act that require municipal and regional housing growth plans to be consistent with the town and regional POCD, the State Plan, and local sewer plans contravene existing law and practice. They will be unlikely to facilitate affordable housing production.

Fair Share

Interestingly, when what is now the Act was reintroduced in November, proponents of the "fair share" provisions of H.B. 5002 claimed that the new Act preserved key elements of the May-June 2025 proposal, while some others claimed that fair share had been removed.

The new Act contains echoes of fair share, but removes the mandates that towns enact zoning regulations that will facilitate the highly prescriptive affordable housing unit and household income targets stated in H.B. 5002.

The fingerprints of fair share are found in the Act's Section 7, which requires regional councils to conduct a housing needs assessment and assign to each municipality an "affordable housing goal," which becomes an organizing focus of the municipal and regional housing growth plans. The main difference from the May-June 2025 bill is that municipalities are required only to adopt "strategies" and "policies" and a schedule, but with no mandates or deadlines for revising zoning regulations.

Development Opportunities

Two foundational questions are: will the General Assembly and the Governor actually appropriate the incentive funds and underpin key sections of the new Act? And will municipalities, faced with completely new requirements but not mandates or penalties for non-compliance, actually cooperate? Meanwhile, for the development community, the opportunities for 2026 and beyond appear to be:

- Take advantage of the new parking rules to increase residential density;
- Examine land zoned commercial or mixed use for opportunities to develop middle housing;
- If a municipality proposes a transit-oriented district or priority housing development zone, pay attention to the potential for residential development as-of-right or by summary review;
- Continue to use § 8-30g where appropriate;
- Continue to work with proven financial and development programs administered by DOH and CHFA, including tax credit and low-interest loan programs;
- Keep an eye out for CMDA development agreements and opportunities they create; and
- Pay attention to grants by OPM and DOH, as they may be an early sign of a development opening.

A Legislative Agenda For 2026

Though legislators may be reluctant to revisit the new Act in the 2026 short session, these problems need attention:

1. Untangle and simplify the process and schedule for housing growth plans;
2. Repeal the dysfunctional and illegal "consistency" requirements for such plans;
3. Modify the nine-unit cap on middle housing developments to a number that will attract developers;
4. Explain how the CMDA program is intended to fit with the new housing programs;
5. Clarify the notably confusing phrases, undefined and hard-to-understand terms, and vague standards that permeate the Act;
6. Clarify roles of municipalities vs. zoning commissions;
7. Be sure the study committees looking at sewer policies and the § 8-30g Ten Percent List at least do not create new obstacles to affordable housing development; and
8. Consider (again) the "low-hanging fruit" we have advocated before, which is to require that all zoning regulations by a date certain comply with Public Act 21-29's amendments to General Statutes § 8-2.

As readers can tell, overall, we are not fans of the new Act. While H.B. 5002 had its flaws that probably justified the Governor's veto, the new Act does not portend robust solutions to our affordable housing shortage.

The goal remains the approval, financing, and construction of thousands of lower-cost housing units, and that goal appears to be as compelling and unaddressed as it was a year ago.

Disclaimer: *This article is not legal advice, but a summary of public information. The Act contains many important details not summarized here.*

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