

June 29, 2021

Significant Land Use Legislation Passed in the 2021 Session

Municipal Practice Group Update

The 2021 session of the Connecticut General Assembly generated more significant land use and zoning proposals, heated debate and public involvement than have been seen in decades. While the bills that ultimately passed through the House and Senate and received the Governor's signature often represent watered down or scaled back versions of those that received the most publicity and attention, there are some very important new laws that affect every Connecticut municipality.

Public Act 21-29 – Revisions to Zoning Enabling Act; Accessory Apartments and More

Many of the most significant provisions are contained in Public Act 21-29, which had been House Bill 6107. These provisions fall into several categories which are listed here:

I. Revisions to the Zoning Enabling Act

Effective October 1, 2021, the statute authorizing zoning, Conn. Gen. Stat. §8-2, has been substantially modified.

- New mandatory provisions that **must be** contained in zoning regulations:
 - To protect state's historic, tribal, cultural and environmental resources.
 - To consider the impact of permitted land uses on contiguous municipalities and on the planning region.
 - To address significant disparities in housing needs and access to educational, occupational and other opportunities.
 - To promote efficient review of land use applications.
 - To affirmatively further the purposes of the Federal Fair Housing Act which prohibits housing discrimination based on race, color,

- national origin, religion, sex, familial status, or disability.
 - To eliminate provisions that allow consideration of the “character of the district” and to, instead, “be drafted with reasonable consideration as to the physical site characteristics of the district and its peculiar suitability for particular uses.”
 - Must state that the regulations “shall expressly allow the development of housing which will meet the housing needs identified” in the state housing plan.
 - Be made in consideration of public and ground drinking water.
- New optional items that can be contained in zoning regulations:
 - Those promoting solar, wind or other renewable energy, combined heat and power.
 - Those creating development incentives for developers who use solar, wind or other renewable energy, combined heat and power, or water or energy conservation techniques.
 - Provide for or require cluster housing.
 - Provide for floating zones, overlay zones and planned development districts.
 - Require use of vehicle miles or vehicle trips as a measure of traffic impact in lieu of or in addition to level of service traffic calculations.
 - Provide potential traffic mitigation strategies.
 - Certain restrictions such as quarrying and clear cutting can be adopted where a traprock or amphibolite ridges are located.
 - Municipal zoning regulations cannot:
 - Prohibit operation of “cottage food operations” in residential zones.
 - Establish a minimum floor area for dwellings greater than that contained in building, housing or other codes. (It is unclear what “other” codes would be permissible to use.)
 - Place a numerical or percentage cap on the number of mixed use or multi-family dwellings in a town.
 - Be applied to deny any land use application, including for any site plan approval, special permit, special exception or other zoning approval, on the basis of (A) a district’s character, unless such character is expressly articulated in such regulations by clear and explicit physical standards for site work and structures, or (B) the immutable characteristics, source of income or income level of any applicant or end user, other than age or disability whenever age-restricted or disability-restricted housing may be permitted.
 - Require more than one parking space for a studio or 1 BR or more than two parking spaces for a dwelling unit with 2 or more BR unless a town opts out using the following procedure:
 - PZC or ZC, by 2/3 vote, votes to initiate the opt-out process.
 - Public hearing is held.
 - The commission decides to opt out within the ordinary statutory deadlines for considering an application (65 days after close of hearing) stating on the record the reasons for the decision (although the 2/3 vote is required to “initiate” the procedure, we believe a 2/3 vote is required to approve).
 - Publishes notice of decision.

- The opt out is ratified by a 2/3 vote of the town's legislative body or its board of selectman if the town meeting is the legislative body.

II. Municipal Land Use Fees

- Municipalities may, by regulation, require applicants to pay reasonable fees associated with necessary review by consultants with respect to technical aspects of an application, e.g., traffic or stormwater.
 - Such fees cannot be used to cover salaries of town employees.
 - Fees shall be accounted for separately and the balance, with interest, returned to the applicant not later than 45 days after completion of technical review. (It is unclear whether it is required to be placed into an interest-bearing account or what happens if a consultant's invoice is received more than 45 days after the completion of the review.)
 - No municipality may adopt a schedule of fees in its fee ordinance for land use applications that results in higher fees for (1) development projects built using the provisions of section 8-30g, as amended by this act, or (2) residential buildings containing four or more dwelling units that are higher than other residential including, but not limited to, higher fees per dwelling unit, per square footage or per unit of construction cost.

III. Accessory Apartment Provisions

- A new set of statutory requirements were adopted mandating authorization of certain accessory apartments using the following definitions:
 - "Accessory apartment" means a separate dwelling unit that (A) is located on the same lot as a principal dwelling unit of greater square footage, (B) has cooking facilities, and (C) complies with or is otherwise exempt from any applicable building code, fire code and health and safety regulations."
 - "As of right" means able to be approved in accordance with the terms of a zoning regulation or regulations and without requiring that a public hearing be held, a variance, special permit or special exception be granted or some other discretionary zoning action be taken, other than a determination that a site plan is in conformance with applicable zoning regulations."
- Effective January 1, 2022, all zoning regulations shall:
 - Designate locations or zoning districts within the municipality in which accessory apartments are allowed, provided at least one accessory apartment shall be allowed as of right on each lot that contains a single-family dwelling and no such accessory apartment shall be required to be an affordable accessory apartment.
 - Allow accessory apartments to be attached to or located within the proposed or existing principal dwelling, or detached from the proposed or existing principal dwelling and located on the same lot as such dwelling.
 - Set a maximum net floor area for an accessory apartment of not less than thirty percent of the net floor area of the principal

dwelling, or one thousand square feet, whichever is less, except that such regulations may allow a larger net floor area for such apartments.

- Require setbacks, lot size and building frontage less than or equal to that which is required for the principal dwelling and require lot coverage greater than or equal to that which is required for the principal dwelling.
 - Provide for height, landscaping and architectural design standards that do not exceed any such standards as they are applied to single-family dwellings in the municipality.
 - Be prohibited from requiring (A) a passageway between any such accessory apartment and any such principal dwelling, (B) an exterior door for any such accessory apartment, except as required by the applicable building or fire code, (C) more than one parking space for any such accessory apartment, or fees in lieu of parking otherwise allowed by section 8-2c of the general statutes, (D) a familial, marital or employment relationship between occupants of the principal dwelling and accessory apartment, (E) a minimum age for occupants of the accessory apartment, (F) separate billing of utilities otherwise connected to, or used by, the principal dwelling unit, or (G) periodic renewals for permits for such accessory apartments.
 - The accessory dwelling regulations do not override: (A) applicable building code requirements, (B) the ability of a municipality to prohibit or limit the use of accessory apartments for short-term rentals or vacation stays, or (C) other requirements where a well or private sewerage system is being used, provided approval for any such accessory apartment shall not be unreasonably withheld.
 - A decision on an as of right accessory apartment application must be made within sixty-five days after receipt of such application by the applicable zoning commission unless the applicant consents to one or more extensions of not more than an additional sixty-five days.
- Municipal regulations cannot:
 - Condition the approval of an accessory apartment on the correction of a nonconforming use, structure or lot.
 - Require the installation of fire sprinklers in an accessory apartment if such sprinklers are not required for the principal dwelling located on the same lot or otherwise required by the fire code.
 - A municipality, special district, sewer or water authority cannot:
 - Consider an accessory apartment to be a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless such accessory apartment was constructed with a new single-family dwelling on the same lot.
 - Require the installation of a new or separate utility connection directly to an accessory apartment or impose a related connection fee or capacity charge.
 - Municipal opt-out process for accessory apartment requirements:

A municipality can opt-out of the statutory accessory apartment regulation requirements under the following procedures taken before January 1, 2023:

- PZC or ZC, by 2/3 vote, votes to initiate the opt-out process.
 - Public hearing is held.
 - The commission decides to opt out within the ordinary statutory deadlines for considering an application (65 days after close of hearing) stating on the record the reasons for the decision (although the 2/3 vote is required to “initiate” the procedure, we believe a 2/3 vote is required to approve).
 - Publishes notice of decision.
 - The opt out is ratified by a 2/3 vote of the town’s legislative body or its board of selectman if the town meeting is the legislative body.
- Failure to adopt or opt out of compliant accessory apartment regulations:

If a municipality fails to adopt new regulations or amend existing regulations or opt out by January 1, 2023, any noncompliant existing regulation that would apply to accessory apartments becomes null and void and such municipality shall approve or deny applications for accessory apartments in accordance with the requirements for regulations set forth in the provisions of subsections (a) to (d) of the new accessory dwelling statute.

IV. Training for Municipal Land Use Agencies

- On and after January 1, 2023, each member of a PZC, PC, ZC or ZBA shall complete at least four hours of training:
 - Those in office on 1/1/2023 must complete four hours by 1/1/2024, and every other year thereafter.
 - For those taking office after 1/1/2023, must complete four hours of training not later than one year after taking office and every other year thereafter.
- Training content:
 - Must contain at least one hour on affordable and fair housing policies.
 - May include process and procedure, including FOIA, interpretation of site plans and maps, impact of zoning on environment, agriculture and historic resources.
 - Training guidelines must be established by OPM prior to 1/1/2022 Training may be provided by various entities such as CAZEO, CCM, CCAPA, Land Use Academy of UConn CLEAR, CBA, COGs, etc.
- Reporting:

- Commissions must report compliance annually to legislative body (or Board of Selectmen in town meeting towns).
- Certification of Municipal Zoning Enforcement Officers
 - Any zoning enforcement officer appointed after 1/1/2023 must be certified by CAZEO.
 - Beginning 1/1/2023 and annually thereafter, any ZEO shall obtain and maintain certification by CAZEO for the duration of their employment.

V. Municipal Affordable Housing Plans

- CGS 8-30j is amended to provide that not later than 6/1/2022, each town shall prepare or amend or adopt an affordable housing plan.
- Affordable housing plan shall be submitted to OPM and posted on the OPM website.
- Affordable housing plans may be coordinated with or included as part of POCD if timing is appropriate.
- Town shall post draft affordable housing plan on its website.

VI. Commission on Connecticut's Development and Future

- Commission formed to evaluate policies related to land use, conservation, housing affordability and infrastructure. Appointments to commission shall be made in a good faith effort to reflect gender and racial diversity of the state.
 - Commission shall submit reports no later than 1/1/2022 and 1/1/2023 regarding various issues including:
 - State POCD.
 - State consolidated plan for housing and development.
 - Guidelines and incentives for affordable housing plan compliance.
 - Alternative sewage systems.
 - Model design guidelines for buildings and streets.

Public Acts 21-163 and 21-34 – Extensions of Municipal Land Use Approvals

- Approvals granted prior to 7/1/2011 (Public Act 21-163)
 - Site Plan, Subdivision, Special Permit and Inland Wetlands approvals, if not already expired, shall expire not less than 14 years from date of approval, with potential additional extension(s) of a total of up to five years beyond that (total of not more than 19 years).
 - Special Permit and Special Exception approvals, if not already expired, and subject to a specific deadline to complete work, shall expire not less than 19 years from date of approval with potential additional extension(s) to allow completion of all or part of the required work.
- Approvals granted on or after 7/1/2011 (Public Act 21-34)
 - Site Plan, Subdivision and Inland Wetlands approvals granted prior to the effective date of the Act, not expired prior to

3/10/2020, shall expire not less than 14 years from date of approval, with potential additional extension(s) of a total of up to five years beyond that (total of not more than 19 years).

- Special Permit and Special Exception approvals prior to the effective date of the legislation, not expired prior to 3/10/2020, and subject to a specific deadline to complete work, shall expire not less than 19 years from date of approval with potential additional extension(s) to allow completion of all or part of the required work.
- Inland Wetlands permits required for a development approved under planning and zoning statutes, shall not take effect until each such required planning and/or zoning approval shall have taken effect and shall be valid for the same time period as such planning and/or zoning approval but not more than 10 years, whichever is earlier.

Read more

[Morris R. Borea](#)

[Mark K. Branse](#)

[Ann M. Catino](#)

[Michael C. Collins](#)

[Alan P. Curto](#)

[Duncan J. Forsyth](#)

[Christopher J. McCarthy](#)

[Ronald F. Ochsner](#)

[Jennifer A. Pedevillano](#)

[James J. Perito](#)

[Richard P. Roberts](#)

[Kenneth R. Slater, Jr.](#)

[Oscar L. Suarez](#)

[Matthew J. Willis](#)

[Michael A. Zizka](#)

[Municipal & State Government](#)

[Environmental & Land Use](#)

[Land Use, Planning/Zoning & Wetlands](#)

Join Our Community

Sign up to receive the latest updates and insights

WHO WE SERVE

LOCATIONS

ABOUT

MAKE PAYM

EXAMPLE

NEWS

DIVERSITY

PRIV

OUR SERVICES

CAREERS

PRO BONO

DISCLA

CULTURE OF POSSIBILITY

CONTACT US

© Halloran & Sage

