September 14, 2023

Land Use Training Guidelines

Established in accordance with PA 21-29 as amended by PA 23-173

Effective January 1, 2022, with amendments effective October 1, 2023

Overview

Subsection (a) of Section 3 of PA 23-173 includes updated requirements for the training of municipal land use officials. The requirements for the establishment of land use training guidelines, and the reporting on training compliance, remain the same as established under PA 21-29. Under PA 21-29, the Office of Policy and Management (OPM) is specifically tasked with developing the land use training guidelines that are the focus of this publication.

The pertinent legislative language for each of these requirements, including the updated requirements for training of municipal land use officials, is summarized below, and provides the framework for OPM's Land Use Training Guidelines that follow.

1) Training of Municipal Land Use Officials
   "On and after January 1, 2023, each member of a municipal planning commission, combined planning and zoning commission, or zoning board of appeals, except for a member of any such commission or board that is a licensed attorney-at-law of this state with four or more years of experience on any such commission or board, or a land use enforcement officer, shall complete at least four hours of training."
   - Those in office on 1/1/2023 must complete four (4) hours of training by 1/1/2024, and once every four years thereafter, or once every term for which such member is elected or appointed if such term is longer than four years.
   - Those taking office after 1/1/2023 must complete four (4) hours of training not later than one year after taking office, and once every four years thereafter, or once every term for which such member is elected or appointed if such term is longer than four years.

2) Establishment of Land Use Training Guidelines
   "Such training shall include at least one hour concerning affordable and fair housing policies and may also consist of (1) process and procedural matters, including the conduct of effective meetings and public hearings and the Freedom of Information Act, as defined in section 1-200 of the general statutes, (2) the interpretation of site plans, surveys, maps, and architectural conventions, and (3) the impact of zoning on the environment, agriculture, and historic resources."
   - See **Land Use Training Guidelines** below.

3) Reporting on Training Compliance
   "Not later than March 1, 2024, and annually thereafter, the planning commission, zoning commission, combined planning and zoning commission, and zoning board of appeals, as applicable, in each municipality shall submit a statement to such municipality's legislative body,

or, in a municipality where the legislative body is a town meeting, its board of selectmen, affirming compliance with the training requirement established pursuant to subsection (a) of this section by each member of such commission or board required to complete such training in the calendar year ending the preceding December thirty-first."

- Each affected board and commission must report to its local authority on the status of its members' compliance with the training requirements by 3/1/2024, and annually thereafter.

Land Use Training Guidelines

The following guidelines allow sufficient flexibility for land use training providers to develop, market, and periodically refresh their course offerings in a manner that is responsive to changes in land use laws and the preferences of municipal officials, with regard to how relevant subject matter is conveyed (e.g., depth, breadth, packaging of topical content). This flexible approach is meant to provide commission and board members with more robust training opportunities that will satisfy local reporting requirements and their own personal interests.

These guidelines were developed by OPM, in collaboration with the Connecticut Association of Zoning Enforcement Officials, the Connecticut Conference of Municipalities, the Council of Small Towns, the Connecticut Chapter of the American Planning Association, the Land Use Academy at the Center for Land Use Education and Research at the University of Connecticut, the Connecticut Bar Association, the regional councils of governments, the Partnership for Strong Communities, the Connecticut Federation of Planning and Zoning Agencies, and other nonprofit or educational institutions that provide land use training.

These guidelines are effective January 1, 2022, with amendments effective October 1, 2023. If you would like additional information on land use training resources, please contact any of the collaborating entities listed above.

A. Mandatory Training (Note: at least 1 hour out of the 4-hour biennial training requirement must come from the Affordable and Fair Housing Policies Section.)

1) Affordable and Fair Housing Policies Section

Topics can include one or more of the following:

- Zoning Laws and Segregation
- The Fair Housing Act
- Municipal Land Use Planning and Zoning Responsibilities Under the Fair Housing Act
- The Meaning of Affirmatively Furthering Fair Housing and How it Applies to Municipalities
- Planning and Zoning to Affirmatively Further Fair Housing
- Zoning Reforms to Promote Diverse Housing Option
- What is Affordable Housing, Who Needs It, and How Has It Evolved Over the Years?

- Addressing Community Affordable Housing Needs with the Public

B. Optional Training (Note: Any combination of courses from the Optional Training sections may be used to supplement the Mandatory Training portion of the 4-hour biennial training requirement.)

1) **Process and Procedures Section** (Suggested 1.0 – 1.5 hours)
Topics can include one or more of the following:

- **The Legal Basis for a Local Commission's Land Use Authority**
  - Roles and responsibilities of land use commissions and agencies, both regulatory and non-regulatory
  - Types of power of local commissions – Legislative, administrative, quasi-judicial
  - Euclid v. Ambler Realty and other court cases
  - Enabling legislation
  - Local regulations
  - Role of the courts and when they get involved

- **Planning and Running a Public Meeting**
  - Quorum requirements
  - When are public hearings required?
  - Who can speak at a public hearing?
  - Time limits for speaking
  - Timeframes for a public hearing
  - Extensions
  - Crowd control when the number of people who show for a hearing exceeds legal capacity
  - Meeting logistics – Room size, public access to presentations, order of speaking
  - Best practices for running in-person, online, or hybrid meetings
  - How to manage difficult situations during a public hearing
  - Alternates – Their role in public hearings, procedure for seating them in place of a regular member
  - Voting – Who votes, abstentions
  - Recording of meetings by others

- **Commissioner Conduct**
  - Bias – What constitutes bias and how to handle
  - Predetermination – What constitutes predetermination and how to handle it
  - Conflicts of interest – Personal, financial, perceived conflicts
  - Commissioner recusal – Who decides, basis for recusal

- How to handle conflicted commissioners who won't recuse themselves
- Ex parte communications – What to do if someone approaches you about an application
- Court remedies in case of a finding of bias, predetermination, or conflict
- Social media concerns
- Representation by a commissioner at another commission
- Freedom of Information Act

2) **Site Plans, Surveys, Maps, and Architectural Conventions Section** (Suggested 1.0 hour)
Topics can include one or more of the following:

- **The Basics**
  - Difference between maps and plans
  - Finding what the plan contains
  - Location Map – Where is the site within the community
  - List of drawings – How to find what you are looking for
  - Title Block – What information this provides
  - Legend – What different symbols tell you
  - Scale – Graphic v. written scale, how to use an engineer's scale, how to measure distances
  - Zoning table – What it tells you
  - Orientation – North not always the same on each sheet
  - Site plan checklist – What it is and how to use it
  - Topography and slope
  - Why plans should be stamped by an engineer, surveyor, etc.

- **Reading a Site Plan**
  - Frontage and lot size requirements
  - Setbacks – How to measure front, side, and rear yards
  - Corner lots – How the regulations apply re: frontage and setbacks
  - Minimum lot size
  - Rear lots
  - Traffic circulation – How does traffic flow within the site
  - Parking requirements
  - Existing and proposed grades and spot elevations
  - Cut and fill and why it matters
  - Site drainage and stormwater systems
  - Utility locations and sizing
  - Landscaping/planting plan – How to tell what is being proposed for location, quantity, size

- Ingress and egress – Location, distance from intersections, sight line concerns
- Construction issues – E&S controls, anti-tracking pads
- Use of GIS – overview of site, visual context, not to be used in place of stamped plans

3) **Environmental, Agriculture, and Historic Resources Section** (Suggested 1.0 – 1.5 hours)

Topics can include one or more of the following:

- **Inland Wetlands and Watercourses**
  - Statutory requirements to regulate
  - Regulated activities
  - Activities that are permitted by right and non-regulated
  - Regulation of agricultural activities
  - Enforcement

- **Aquifer Protection**
  - Statutory requirements to regulate
  - Mapping and regulation of activities

- **Coastal Area Management**
  - Applications requiring coastal area management review
  - Coastal site plan review
  - Criteria for Coastal Site Plan Review (CSPR)

- **Flood Management**
  - Overview of FEMA mapping and role in land use permitting

- **Right to Farm Act**
  - Applicability to municipal land use permitting

- **Endangered Species Act**
  - Applicability to local permitting

- **Low Impact Development and Stormwater Management**
  - Applicability to local zoning and subdivision regulation

- **Historic District Commissions**
  - Formation and modification of districts
  - Certificates of appropriateness

- **Historic Buildings, Places, and Roads**
  - When can historic factors be considered in municipal land use permitting?

It is strongly recommended that any new commission or board members first complete a Basic Training course, such as that provided by the CLEAR Land Use Academy, before pursuing training in other topics of interest.

While this guidance is intentionally limited to the one mandatory training section and the three optional training sections prescribed in Section 9 of Public Act 21-29, OPM recognizes that there are numerous related topics that affected land use boards and commissions might find acceptable for their members' compliance in meeting the 4-hour training requirement.

Since there is no formal state certification program, each municipality is ultimately responsible for ensuring the compliance of its affected commission and board members. Municipalities are encouraged to consult with their respective COG on possible ways to achieve regional efficiencies in this effort, such as by facilitating the sharing of information related to existing municipal land use training resources and best practices, as well as the scheduling and hosting of regional training sessions offered by land use training providers.

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RECENT LAND USE LEGISLATION - 2023

Training for Land Use Agency Members

Public Act 21-29, now codified as Connecticut General Statutes Sec. 8-4c, requires that commencing January 1, 2023, every member of a planning and zoning commission and zoning board of appeals must complete at least 4 hours of training each year. The State of Connecticut Office of Policy and Management was tasked with developing the land use training guidelines. These training guidelines were developed in collaboration with several organizations that already provide land use training, such as the Connecticut Federation of Planning and Zoning Agencies which I serve as the Executive Director. Rather than establish a ridged training protocol, OPM instead opted for a flexible training approach that has left it up to individual municipal land use agencies to determine what training will meet these guidelines.

Certificates of Location

Public Act 23-40 amended Connecticut General Statutes Sec. 14-54 by removing the authority to approve a certificate of location for an automobile dealer or repairer's license from a planning and zoning commission or zoning board of appeals. Instead, the application is to be filed with the Zoning Enforcement Officer of the municipality where the license is desired. The ZEO must them determine whether the proposed location and use of the property conforms to the zoning regulations of the municipality. One question is whether this determination by the ZEO is appealable to the zoning board of appeals.

Regulation of Group and Family Childcare Homes

Public Act 23-142, now codified as Connecticut General Statues Sec. 8-3j, provides that:
(a) No zoning regulation shall treat any family childcare home or group childcare home, located in a residence, and licensed by the Office of Early Childhood pursuant to chapter 368a, in a manner different from single or multifamily dwellings.
(b) Not later than December 1, 2023, and annually thereafter, each municipality shall submit to the Office of Policy and Management a sworn statement from the chief executive officer of the municipality stating (1) that the municipality's zoning ordinances are in compliance with (A) subsection (a) of this section, and (B) the provisions of subdivision (1) of subsection (d) of section 8-2, or (2) the specific time frame within which the municipality will bring its zoning ordinances into compliance with subsection (a) of this section and subsection (d) of section 8-2.

It should be noted that this Public Act supplements a similar requirement setforth in § 8-2 of the General Statues which states that: (d) Zoning regulations adopted pursuant to subsection (a) of this section shall not: (1) (A) Prohibit the operation in a residential zone of any family childcare home or group childcare home located in a residence, or (B) require any special zoning permit or special zoning exception for such operation;

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Useful definitions for this public Act are:

Sec. 19a-77. Child care services defined. Exclusions. "child care services" includes:

(2) A "group child care home" which offers or provides a program of supplementary care (A) to not less than seven or more than twelve related or unrelated children on a regular basis, or (B) that meets the definition of a family child care home except that it operates in a facility other than a private family home;

(3) A "family child care home" which consists of a private family home providing care (A) for (i) not more than six children, including the provider's own children not in school full time, without the presence or assistance of an assistant or substitute staff member approved by the Commissioner of Early Childhood, pursuant to section 19a-87b, present and assisting the provider, or (ii) not more than nine children, including the provider's own children, with the presence and assistance of such approved assistant or substitute staff member, and (B) for not less than three or more than twelve hours during a twenty-four-hour period and where care is given on a regularly recurring basis except that care may be provided in excess of twelve hours but not more than seventy-two consecutive hours to accommodate a need for extended care or intermittent short-term overnight care. During the regular school year, for providers described in subparagraph (A)(i) of this subdivision, a maximum of three additional children who are in school full time, including such provider's own children, shall be permitted, except that if such provider has more than three children who are such provider's own children and in school full time, all of such provider's own children shall be permitted. During the summer months when regular school is not in session, for providers described in subparagraph (A)(i) of this subdivision, a maximum of three additional children who are otherwise enrolled in school full time shall be permitted if there is such an approved assistant or substitute staff member present and assisting such provider, except that (i) if such provider has more than three such additional children who are such provider's own children, all of such provider's own children shall be permitted, and (ii) such approved assistant or substitute staff member shall not be required if all of such additional children are such provider's own children;

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REMOTE AND HYBRID PUBLIC MEETING REQUIREMENTS

Sections 147 and 149 of Public Act 21-2 amended the Freedom of Information Act permitting public meetings to be held remotely as well as in person as long as certain requirements are met. This language is now codified as Connecticut General Statutes Sec. 1-225a.

Additional Notice Requirements for Remote Public Meetings

1. Direct notice to each member of the municipal agency that the meeting will be held fully or partially by electronic means must be made at least 48 hours before the meeting is to take place. Notice by email is acceptable.
2. Notice that the meeting will be fully or partially by electronic means must also be posted 48 hours before the meeting is to take place in the Borough's regular office and on the Borough's website.
3. The notice of a remote meeting can be made part of the usual meeting notice as long as it is posted at least 48 hours before the meeting is to take place. The acceptable practice is to place the notice of a remote meeting at the top of the meeting notice and before the agenda which is then posted in accordance with the usual posting requirements as well as these additional ones.
4. The notices must include directions on how to attend. This is usually done by providing the Zoom link information which consists of the meeting identity number as well as a password. A telephone number for the Borough should also be included as a 'help' line for those having difficulty attending.

Participation Requirements

The Public: If a municipal agency decides to hold a meeting solely by electronic means, it must provide certain accommodations to the public. If a member of the public makes a written request to attend by electronic means, the agency must provide a physical location and the necessary electronic means for doing so. Said request must be provided at least 24 hours before the meeting is to take place. The opportunity to participate for members of the public, such as during a public comment portion of the meeting, must be available to members of the public attending remotely as for those attending in person.

Board Members: Any member of the municipal agency must be allowed to participate by electronic means. However, the meeting does not need to be continued due solely to an interruption of the electronic connection to the remote member unless the loss of this member results in the loss of a quorum. For the member to participate, the electronic means must allow for the public to hear and identify the remote member.

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Remote Meeting Minutes

Any meeting held fully or partially by electronic means must be transcribed or recorded and such recording or transcription posted on the agency's website and made available in the agency's office or regular place of business not more than 7 days after the meeting and maintained there for 45 days thereafter.

Any vote taken at a meeting during which any member participates by electronic means shall be taken by roll call unless the vote is unanimous.

The minutes of the meeting shall record a list of members that attended such meeting in person and a list of members that attended such meeting by means of electronic equipment.

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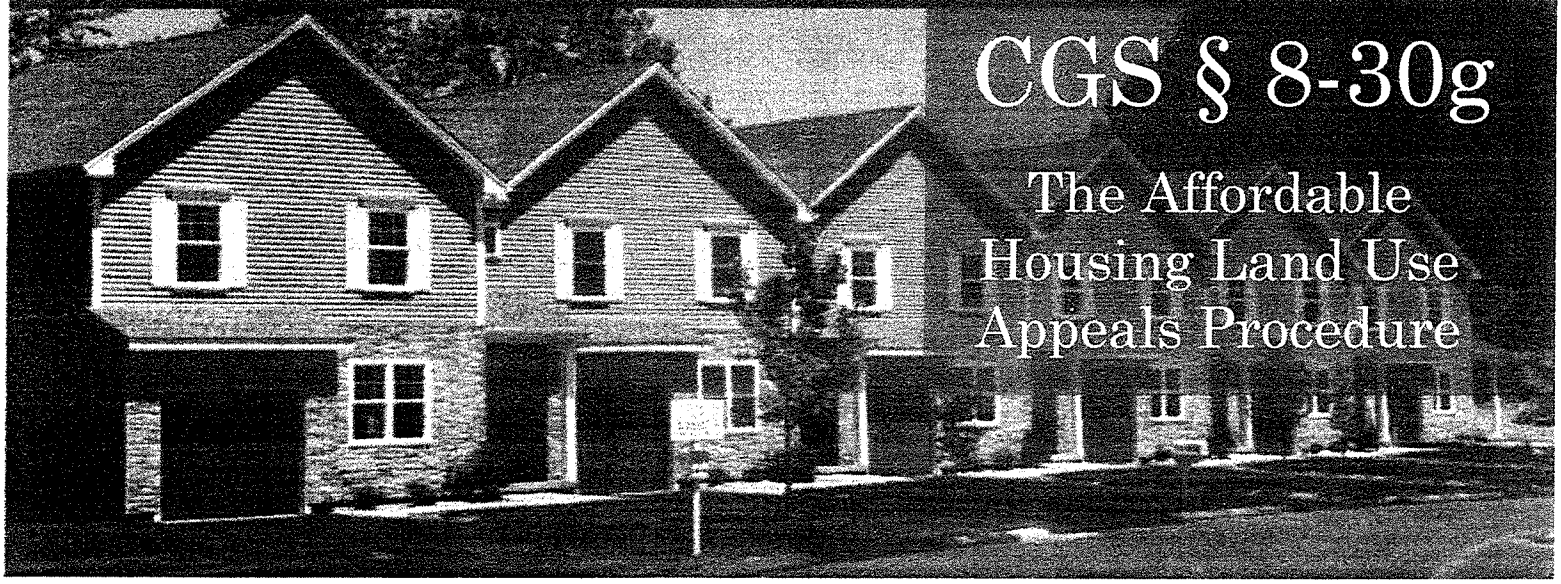
Issue Brief



CGS § 8-30g

The Affordable Housing Land Use Appeals Procedure

What is the affordable housing land use appeals procedure and what is its purpose?

The procedure requires municipal planning and zoning agencies (hereinafter "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.

What types of developments trigger the law's protection?

The proposed development must be an "affordable housing development," which the law defines to include "assisted housing" and "set-aside developments."

Under what circumstances are municipalities subject to the law?

With one exception, 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. Under the exception, a moratorium does not apply to appeals related to applications for certain small or low-income assisted housing developments.

What types of dwelling units count toward the 10%?

Affordable housing is defined to include (1) "assisted housing," (2) housing currently financed by Connecticut Housing Finance Authority mortgages, (3) housing subject to deeds and conditions restricting its sale or rental to low- and moderate-income people, and (4) mobile homes or accessory apartments subject to certain deed restrictions.

Assisted Housing

Housing that receives government assistance to construct or rehabilitate low- and moderate-income housing, or housing occupied by individuals receiving rental assistance.

Set-Aside Development

A development in which, for at least 40 years after initial occupancy, at least 30% of the units are deed restricted. Specifically, at least:

(1) 15% of the units must be deed restricted to households earning 60% or less of the area median income (AMI) or state median income (SMI), whichever is less, and
(2) 15% of the units must be deed restricted to households earning 80% or less of the AMI or SMI, whichever is less.

October 28, 2022

2022-R-0254
(Updates 2017-R-0158)

When is a municipality eligible for a moratorium?

A municipality is eligible for a temporary suspension of procedure (i.e., moratorium) each time it shows it has added a certain amount of affordable housing units over the applicable time period. Newly built set-aside and assisted housing developments count toward the moratorium, as do units subject to certain deed restrictions. Generally, a moratorium lasts four years, except that municipalities with at least 20,000 dwelling units are eligible for moratoria lasting for five years if they are applying for a second or subsequent moratorium (i.e., they previously qualified for a moratorium).

With one exception, a municipality is eligible for a moratorium each time it shows it has added affordable housing units, measured in HUE (housing unit equivalent) points, equaling the greater of 2% of the housing stock, as of the last census, or 75 HUE points. Under the exception, the 2% threshold drops to 1.5% for municipalities that have at least 20,000 dwelling units, adopt an affordable housing plan, and apply for a second or subsequent moratorium. HUE points are calculated as shown in the adjacent table. (Bonus points are in addition to base points.) PA 17-170 made temporary changes to the procedure, including (1) lowering the HUE points required for a moratorium from 75 to 50 and (2) making three additional categories of units eligible for bonus HUE points. These changes sunset on September 30, 2022.

Unit Type		Base HUE Value (per unit)
Owned or rented market-rate unit in a "set-aside development"		0.25
Owned or rented elderly unit restricted to households earning no more than 80% of the median income		0.50
Owned family unit restricted to households earning no more than:	80% of median income	1.00
	60% of median income	1.50
	40% of median income	2.00
Rented family unit restricted to households earning no more than:	80% of median income	1.50
	60% of median income	2.00
	40% of median income	2.50
Owned or rented homes in resident-owned mobile manufactured home parks occupied by households earning 80% or less of the median income		1.50
Owned or rented homes in resident-owned mobile manufactured home parks occupied by households earning 60% or less of the median income		2.00
Owned or rented homes in resident-owned mobile manufactured home parks not otherwise eligible for points		0.25

Unit Type	Bonus HUE Value (per unit)
Rental family units in a set-aside development, if the developer applied for local approval before July 6, 1995	Bonus equal to 22% of the total points awarded to the development
Additional Bonuses That Sunset on September 30, 2022	
Owned or rented restricted family units in an incentive housing development	0.25 bonus
Owned or rented restricted family units with at least 3 bedrooms	0.25 bonus
Owned or rented restricted elderly units, if at least 60% of restricted units used toward the moratorium are family units	0.50 bonus

How can municipalities defend an appeal brought under the procedure?

Municipalities cannot defend an appeal on the grounds that the application does not comply with land use regulations. Instead, to defend an appeal, a municipality must show either:

1. the decision was necessary to protect substantial public interests in health, safety, or other matters the municipal commission may legally consider, and that these interests clearly outweigh the need for affordable housing and cannot be protected by making reasonable changes to the proposed development or
2. the development is (a) receiving no government funds and (b) located in an industrial zone that does not permit residential uses.

Learn More

Public Act 17-170 (vetoed; veto overridden)

OLR's Summary of Public Act 17-170

CGS § 8-30g, as amended by PA 21-29, and the related regulations

Affordable Housing Under CGS § 8-30g (2022-R-0116)

Moratoria Granted Under CGS § 8-30g (2022-R-0147)

Annual Lists Showing Percentage of Affordable Housing in Each Municipality

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AFFORDABLE HOUSING APPLICATION PRIMER

Section 8-30g(b)(1) of the Affordable Housing Act provides as follows:

"Any person filing an Affordable Housing Application with a commission shall submit, as part of the application, an affordability plan which shall include at least the following:

A) Designation of the person, entity, or agency that will be responsible for the duration of any affordability restrictions, for the administration of the affordability plan and its compliance with the income limits and sale price or rental restrictions of this chapter;

B) An affirmative fair housing marketing plan governing the sale or rental of all dwelling units;

C) A sample calculation of the maximum sales prices or rents of the intended affordable dwelling units;

D) A description of the projected sequence in which, within a set-aside development, the affordable dwelling units will be built and offered for occupancy and the general location of such units within the proposed development; and

E) Draft zoning regulations, conditions of approvals, deeds, restrictive covenants or lease provisions that will govern the affordable dwelling units."

If an Affordable Housing Applicant is to receive the special treatment mandated by Sec. 8-30g of the Connecticut General Statutes the applicant must submit, as part of his application, all of the documents specified in Sec. 8-30g(b)(1).

This special treatment provided by Sec. 8-30g is, in part, that the burden shall be on the commission to prove, based upon the evidence in the administrative record complied before it, that:

1) The decision from which the appeal is taken and the reasons cited for such decision are supported by sufficient evidence in the record;

2) The decision is necessary to protect substantial public interests in health, safety or other matters which the commission may legally consider;

3) Such public interests clearly outweigh the need for affordable housing;

§ 100.500. [Effective5/1/2023] Discriminatory effect prohibited

Liability may be established under the Fair Housing Act based on a practice's discriminatory effect, as defined in paragraph (a) of this section, even if the practice was not motivated by a discriminatory intent. The practice may still be lawful if supported by a legally sufficient justification, as defined in paragraph (b) of this section. The burdens of proof for establishing a violation under this subpart are set forth in paragraph (c) of this section.

(a) *Discriminatory effect.* A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.

(b) *Legally sufficient justification.*

(1) A legally sufficient justification exists where the challenged practice:

(i) Is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent, with respect to claims brought under 42 U.S.C. 3612, or defendant, with respect to claims brought under 42 U.S.C. 3613 or 3614; and

(ii) Those interests could not be served by another practice that has a less discriminatory effect.

(2) A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative. The burdens of proof for establishing each of the two elements of a legally sufficient justification are set forth in paragraphs (c)(2) and (3) of this section.

(c) *Burdens of proof in discriminatory effects cases.*

(1) The charging party, with respect to a claim brought under 42 U.S.C. 3612, or the plaintiff, with respect to a claim brought under 42 U.S.C. 3613 or 3614, has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect.

(2) Once the charging party or plaintiff satisfies the burden of proof set forth in paragraph (c)(1) of this section, the respondent or defendant has the burden of proving that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant.

Federal Limitations on Local Governance

There are several Federal Laws and Constitutional guarantees which place restrictions on local governance that can impose significant financial penalties if a municipality violates them. They will be addressed briefly.

A. Americans with Disabilities Act

The Americans with Disabilities Act [ADA] is codified as 42 U.S.C. Sec. 12131 et seq. and is divided into three parts. Title I deals with discrimination against the disabled in employment, Title II addresses discrimination in the area of public services while Title III handles discrimination in access to public accommodations and services by private entities. In the area of municipal governance, Title II applies to anything a public entity does and covers all governmental activities. *Innovative Health Systems v. City of White Plains, 117 F.3d 37 (2nd Cir. 1997).*

In order to have a violation of Title II of the ADA, a person must show that he or she is disabled, that he or she was denied or excluded from some program or benefit of a public entity or otherwise discriminated against, and that such denial, exclusion or discrimination was based upon the person's disability.

Where a disability has been shown, a public entity must reasonably modify its policies, practices, or procedures to avoid discrimination. When deciding whether a reasonable accommodation can be made, two factors must be considered: that there not be an undue financial burden on the community and that the accommodation would not alter the regulatory scheme of the public entity. If the public entity can demonstrate that the modifications would fundamentally alter the nature of its service, program, or activity, it is not required to make the modification.

For example, a municipal zoning ordinance requires a set-back of 12 feet from the curb in the central business district. In order to install a ramp to the front entrance of a pharmacy, the owner must encroach on the set-back by three feet. Granting a variance in the zoning requirement may be a reasonable modification of town policy.

B. Fair Housing Act

The Fair Housing Amendments Act [FHA] is codified at 42 U.S.C. Sec. 3601-3631 and protects people from discrimination when they are renting or buying a home, getting a mortgage, seeking housing assistance, or engaging in other housing-related activities. The 1988 amendments to the Act included handicapped persons as a protected class. The FHA requires public officials to make reasonable accommodations in their regulations and practices when addressing housing.

The terms 'reasonable accommodation' is not defined in the Act and is thus subject to interpretation. The term has been defined by a court to include changing a rule that is generally applicable so as to make it less burdensome. A balancing test has also been

used whereby " ... the interest and benefit to the handicapped individual is weighed against the interest of and burden to the municipality in making accommodation based on the facts of each case." *Robinson v. City of Friendswood, 890 F.Supp. 616 (S.D. Tex. 1995).*

It is not enough to show that a person is disabled and that a government regulation or practice denied him or her a housing opportunity, discriminatory intent must also be shown. "Congress intended that the FHA permit reasonable government limitations as long as they are applied to all groups and do not effectively discriminate on the basis of handicap." *Robinson at 622.*

C. Religious Land Use and Institutionalized Persons Act

This federal law, codified as 42 U.S.C. 2000cc et seq. and commonly referred to as RLUIPA is a civil rights law that protects individuals and religious assemblies and institutions from discriminatory and unduly burdensome land use regulations, which include historic district regulations. If the application of land use regulations creates a substantial burden on religious exercise, such application is invalid unless it is supported by a compelling governmental interest and is done so by the least restrictive means.

It is beyond question that the regulation of land use is a compelling governmental interest. Thus, the question of whether there is a RLUIPA violation usually centers on whether the governmental action complained of was the least restrictive means. There is no definition of least restrictive means, requiring courts to make a case by case decision on this issue.

RLUIPA also contains a separate legal test – whether or not the governmental regulation of practice is discriminatory. The Act describes discriminatory activity as treating religious uses on less than equal terms, by excluding religious land uses from a jurisdiction or by imposing unreasonable limitations on religious land uses within a jurisdiction.

D. First Amendment-Free Speech

A comprehensive town ordinance regulating signs was challenged by a local church on the ground that the code violated its First Amendment Rights under the U.S. Constitution. The code generally required that a permit be obtained from the town before a sign could be installed. Certain exceptions to this permit requirement were included in the ordinance that allowed certain types of signs to be installed without a permit such as political signs, ideological signs and qualified events such as church service signs.

When one of the church's signs was seized by the town and citations for violating the ordinance were threatened, the Church filed a lawsuit in federal court challenging the validity of the ordinance. The basis for the challenge was that the ordinance treated signs differently depending on what the sign advertised. For example, political signs were treated more favorably than signs that advertised events such as church services.

Since a person would need to read a sign to determine what provisions of the sign code would apply, the Supreme Court found the town's sign ordinance to be content based. The Court stated that the First Amendment of the U.S. Constitution provides that "a government, including a municipal government vested with state authority [such as a zoning commission] has no power to restrict expression because of its message, its ideas, its subject matter or its content." It went on the state that "Content based laws – those that target speech based on its communicative content – are presumptively unconstitutional." Since the town could not provide a compelling reason for treating the Church's signs more restrictively than other signs, such as political signs, the sign ordinance was struck down. *See Reed v. Town of Gilbert, 135 S.Ct 2218 (2015).*

E. Section 1983 – Civil Rights Violation

42 U.S.C. Sec. 1983 states that "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ... ."

A violation of any of the above discussed federal laws by the Borough would allow the person so harmed to claim both injunctive and monetary claims for relief in a lawsuit brought pursuant to these laws. The money damages can be substantial.