

Senate Bill No. 1500
June Special Session, Public Act No. 07-4
AN ACT IMPLEMENTING THE PROVISIONS OF THE BUDGET CONCERNING
GENERAL GOVERNMENT.

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

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Sec. 38. (NEW) (Effective July 1, 2007) As used in this section and sections 39 to 49, inclusive, of this act:

- (1) "**Approved incentive housing zone**" means an overlay zone that has been adopted by a zoning commission and for which a letter of final eligibility has been issued by the secretary under section 42 of this act.
- (2) "Building permit payment" means the one-time payment, made pursuant to section 44 of this act, for each qualified housing unit located within an incentive housing development for which a building permit has been issued by the municipality.
- (3) "Developable land" means the area within the boundaries of an approved incentive housing zone that feasibly can be developed into residential or mixed uses consistent with the provisions of sections 38 to 49, inclusive, of this act, not including: (A) Land already committed to a public use or purpose, whether publicly or privately owned; (B) existing parks, recreation areas and open space that is dedicated to the public or subject to a recorded conservation easement; (C) land otherwise subject to an enforceable restriction on or prohibition of development; (D) wetlands or watercourses as defined in chapter 440 of the general statutes; and (E) areas exceeding one-half or more acres of contiguous land that are unsuitable for development due to topographic features, such as steep slopes.
- (4) "Duplex" means a residential building containing two units.
- (5) "Eligible location" means: (A) An area near a transit station, including rapid transit, commuter rail, bus terminal, or ferry terminal; (B) an area of concentrated development such as a commercial center, existing residential or commercial district, or village district established pursuant to section 8-2j of the general statutes; or (C) an area that, because of existing, planned or proposed infrastructure, transportation access or underutilized facilities or location, is suitable for development as an incentive housing zone.
- (6) "Historic district" means an historic district established pursuant to chapter 97a of the general statutes.
- (7) "Incentive housing development" means a residential or mixed-use development (A) that is proposed or located within an approved incentive housing zone; (B) that is eligible for financial incentive payments set forth in sections 38 to 49, inclusive, of this act; and (C) in which not less than twenty per cent of the dwelling units will be conveyed subject to an incentive housing restriction requiring that, for at least thirty years after the initial occupancy of the development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which

persons pay thirty per cent or less of their annual income, where such income is less than or equal to eighty per cent or less of the median income.

(8) "Incentive housing restriction" means a deed restriction, covenant, zoning regulation, site plan approval condition, subdivision approval condition, or affordability plan constituting an obligation with respect to the restrictions on household income, sale or resale price, rent and housing costs required by sections 38 to 49, inclusive, of this act, enforceable for thirty years as required by said sections, and recorded on the land records of the municipality where the housing is located.

(9) "Incentive housing zone" means a zone adopted by a zoning commission pursuant to sections 38 to 49, inclusive, of this act, as an overlay to one or more existing zones, in an eligible location.

(10) "Incentive housing zone certificate of compliance" means a written certificate issued by the secretary in accordance with sections 38 to 49, inclusive, of this act.

(11) "Letter of eligibility" means a preliminary or final letter issued to a municipality by the secretary pursuant to section 42 of this act.

(12) "Median income" means, after adjustments for household size, the area median income as determined by the United States Department of Housing and Urban Development for the municipality in which an approved incentive housing zone or development is located.

(13) "Mixed-use development" means a development containing one or more multifamily or single-family dwelling units and one or more commercial, public, institutional, retail, office or industrial uses.

(14) "Multifamily housing" means a building that contains or will contain three or more residential dwelling units.

(15) "Open space" means land or a permanent interest in land that is used for or satisfies one or more of the criteria listed in subsection (b) of section 7-131d of the general statutes.

(16) "Secretary" means the Secretary of the Office of Policy and Management or the designee of the secretary.

(17) "Townhouse housing" means a residential building consisting of a single-family dwelling unit constructed in a group of three or more attached units, in which each unit extends from foundation to roof and has open space on at least two sides.

(18) "Zone adoption payment" means a one-time payment, made pursuant to section 44 of this act.

(19) "Zoning commission" means a municipal agency designated or authorized to exercise zoning powers under chapter 124 of the general statutes or a special act, and includes an agency that exercises both planning and zoning authority.

Sec. 39. (NEW) (Effective July 1, 2007) (a) Notwithstanding the provisions of a charter or special act, a zoning commission may adopt, as part of the zoning regulations adopted under section 8-2 of the general statutes or any special act, regulations establishing an incentive housing zone in accordance with the provisions of sections 38 to 49, inclusive, of this act.

(b) An incentive housing zone shall satisfy the following requirements:

- (1) The zone shall be consistent with the state plan of conservation and development and be located in an eligible location.
- (2) The regulations of the zone shall permit, as of right, incentive housing development.
- (3) The minimum allowable density for incentive housing development, per acre of developable land, shall be: (A) Six units per acre for single-family detached housing; (B) ten units per acre for duplex or townhouse housing; and (C) twenty units per acre for multifamily housing. A municipality whose population as determined by the most recent federal decennial census is **less than five thousand**, when applying to the secretary for a letter of eligibility under section 42 of this act, may request approval of minimum as of right densities of not less than four units per acre for single-family detached housing, not less than six units per acre for duplex or townhouse housing, and not less than ten units per acre for multifamily housing. In making such request, the municipality shall provide the Secretary of the Office of Policy and Management with evidence of sewage disposal, water supply, traffic safety or other existing, substantial infrastructure limitations that prevent adoption of the minimum densities set forth in this subdivision. If the proposed incentive housing zone otherwise satisfies the requirements of this section, the secretary may issue the requested letter of eligibility. A municipality may request a waiver of the density requirements of this subdivision and the secretary may grant a waiver if the municipality demonstrates in the application that the land to be zoned for incentive housing development is owned or controlled by the municipality itself, an agency thereof, or a land trust, housing trust fund or a nonprofit housing agency or corporation. The proposed incentive housing zone regulation shall require, in an enforceable manner, that one hundred per cent of the proposed residential units will be subject to an incentive housing restriction, and the proposed incentive housing zone will otherwise satisfy the requirements of this section.
- (4) In order to qualify for financial incentive payments set forth in section 44 of this act, the regulations of an incentive housing zone concerning the minimum as of right densities set forth in subdivision (3) of this subsection shall constitute an increase of at least twenty-five per cent above the density allowed by the underlying zone, notwithstanding the provisions of said section 44 with regard to zone adoption and building permit payments.
- (5) The minimum densities prescribed in subdivision (3) of this subsection shall be subject only to site plan or subdivision procedures, submission requirements and approval standards of the municipality, and shall not be subject to special permit or special exception procedures, requirements or standards.
- (6) An incentive housing zone may consist of one or more subzones, provided each subzone and the zone as a whole comply with the requirements of sections 38 to 49, inclusive, of this act.
- (7) The land area of an incentive housing zone shall not exceed ten per cent of the total land area in the municipality. The aggregate land area of all incentive housing zones and subzones in a municipality shall not exceed twenty-five per cent of the total land area in the municipality.
- (c) A zoning commission may modify, waive or delete dimensional standards contained in the zone or zones that underlie an incentive housing zone in order to support the

minimum or desired densities, mix of uses or physical compatibility in the incentive housing zone. Standards subject to modification, waiver or deletion include, but shall not be limited to, building height, setbacks, lot coverage, parking ratios and road design standards.

(d) If a zoning commission adopts a regulation for an incentive housing zone that permits single-family detached homes on subdivided lots, requiring subdivision approval under the subdivision regulations of the municipality, the zoning commission shall make a written finding that the applicability of such subdivision regulations will not unreasonably impair the economic or physical feasibility of constructing housing at the minimum densities and subject to an incentive housing restriction as required in sections 38 to 49, inclusive, of this act. If housing on subdivided lots is proposed in an incentive housing zone, the zoning commission shall use its best efforts to adopt or encourage the planning commission to adopt subdivision standards that will ensure consistency of the single-family detached housing with the purposes of sections 38 to 49, inclusive, of this act.

(e) The regulations of an incentive housing zone may allow for a mix of business, commercial or other nonresidential uses within a single zone or for the separation of such uses into one or more subzones, provided that the zone as a whole shall comply with the requirements of sections 38 to 49, inclusive, of this act, and that such uses shall be consistent with as-of-right residential uses and densities required under this section.

(f) An incentive housing zone may overlay all or any part of an existing historic district or districts, and a municipality may establish an historic district within an approved incentive housing zone, provided, if the requirements or regulations of such historic district render the approved housing incentive zone not in compliance with the provisions of sections 38 to 49, inclusive, of this act, the secretary shall deny a preliminary or final letter of eligibility, deny or revoke a certificate of compliance, or deny any financial incentive payments set forth in section 44 of this act.

(g) An applicant for site plan or subdivision approval to construct an incentive housing development within an approved zone may, through an incentive housing restriction, exceed the minimum requirements for such a development as follows: (1) More than twenty per cent of the total proposed dwelling units may be subject to the restriction; (2) the maximum annual income of qualifying households may be less than eighty per cent of the area median income; or (3) the duration of the restriction may be longer than thirty years. An application for approval of an incentive housing development may not be denied on the basis that the proposed incentive housing restriction contains one or more of the provisions set forth in this subsection.

(h) The provisions of this section shall not be construed to affect the power of a zoning commission to adopt or amend regulations under chapter 124 of the general statutes or any special act.

Sec. 40. (NEW) (Effective July 1, 2007) (a) A zoning commission, at the time of and as part of its adoption of regulations for an incentive housing zone, may adopt design standards for incentive housing developments within such zone. Such design standards (1) may ensure that construction within the incentive housing zone is complementary to

adjacent and neighboring buildings and structures, and consistent with the housing plan provided for in section 41 of this act, and (2) may address the scale and proportions of buildings; site coverage; alignment, width and grade of streets and sidewalks; type and location of infrastructure; location of building and garage entrances; off-street parking; protection of significant natural site features; location and design of open spaces; signage; and setbacks and buffering from adjacent properties. (b) A design standard shall not be adopted if such standard will unreasonably impair the economic or physical feasibility of constructing housing at the minimum densities and with the required incentive housing restriction set forth in sections 38 to 49, inclusive, of this act. The Secretary of the Office of Policy and Management shall not approve a request for a letter of preliminary or final eligibility under section 42 of this act if a proposed design standard will violate the provisions of this subsection.

Sec. 41. (NEW) (Effective July 1, 2007) On or before June 30, 2017, a municipality may file with the Secretary of the Office of Policy and Management an application for preliminary determination of eligibility for a zone adoption payment pursuant to subsection (a) of section 44 of this act. Such application shall:

- (1) Identify and describe the boundaries of the proposed incentive housing zone or zones;
- (2) Identify, describe and calculate the developable land within the proposed incentive housing zone or zones;
- (3) Identify and describe existing and potential residential development and the potential for reuse of existing or underutilized buildings within the zone or zones;
- (4) Calculate the number of residential units that may be constructed in the zone or zones if the proposed regulations are approved based on developable land and the minimum as-of-right densities set forth in subdivision (3) of subsection (b) of section 39 of this act;
- (5) Include a housing plan that describes the anticipated build-out of the zone or zones, including information on available and proposed infrastructure, compatibility of proposed incentive housing development with existing and proposed buildings and uses, and efforts that the municipality is making or intends to make to support and promote the residential construction permitted by the proposed regulations;
- (6) Include the text of the proposed incentive housing zone regulations and design standards and, if applicable, the text of the subdivision regulations; and
- (7) Include the text of the proposed incentive housing restriction and a plan for administering and enforcing its requirements and limitations.

Sec. 42. (NEW) (Effective July 1, 2007) (a) Upon application by a municipality under section 41 of this act, the Secretary of the Office of Policy and Management shall, not later than sixty days after receipt, issue, in writing, a preliminary determination of the eligibility of the municipality for the financial incentive payments set forth in section 44 of this act. At least thirty days before making such preliminary determination, the secretary shall electronically give notice of the application to all persons who have provided the secretary with a current electronic mail address and a written request to

receive such notices. If the secretary determines that the application is incomplete or the proposed incentive housing zone is not eligible or does not comply with the provisions of sections 38 to 49, inclusive, of this act, the secretary shall, within the sixty-day response period, notify the municipality, in writing, of the reasons for such determination. A municipality may thereafter reapply for approval after addressing the reasons for ineligibility. The secretary's failure to issue a written response within sixty days of receipt shall be deemed to be disapproval, after which the municipality may reapply.

(b) After a municipality has received from the secretary a preliminary letter of eligibility, the zoning commission of the municipality may adopt the incentive housing zone regulations and design standards as proposed to the secretary for preliminary approval. Not later than thirty days after receipt from the municipality of a written statement that its zoning commission has adopted the proposed regulations and standards, the secretary shall issue a letter of final approval of the incentive housing zone. The secretary's failure to issue a letter of final approval not more than thirty days after receipt of the written statement shall be deemed disapproval of the zone after which the municipality may reapply for determination of eligibility under this section.

(c) The secretary shall not approve any proposed incentive housing zone for which the proposed regulations or design standards have the intent or effect of discriminating against, making unavailable, denying or impairing the physical or financial feasibility of housing which is receiving or will receive financial assistance under any governmental program for the construction or substantial rehabilitation of low or moderate income housing, or any housing occupied by persons receiving rental assistance under chapter 319uu of the general statutes or Section 1437f of Title 42 of the United States Code.

(d) Any amendment to the regulations or design standards approved by the secretary for preliminary or final eligibility shall be submitted to the secretary for approval as set forth in this section. The secretary shall approve or disapprove such amendment not more than sixty days after receipt of the amendment. If the secretary fails to approve or disapprove such amendment within such period, the amendment shall be deemed to be disapproved. Thereafter, the commission may reapply for approval of the amendment.

Sec. 43. (NEW) (Effective July 1, 2007) (a) Each municipality whose zoning commission has received a final determination of eligibility and has adopted an approved incentive housing zone shall annually, in accordance with procedures established by the Secretary of the Office of Policy and Management, apply to the secretary for an incentive housing zone certificate of compliance. To receive a certificate, the municipality shall verify within the time specified by the secretary that:

- (1) The zoning commission of the municipality has not amended or repealed any portion of the regulations or design standards in the incentive housing zone without approval of the secretary as required by sections 40 and 42 of this act;
- (2) The approval of the incentive housing zone has not been revoked by the secretary;
- (3) The municipality is making reasonable efforts to assist and promote approval of incentive housing development and construction of housing within the approved zone or zones; and

(4) The zoning commission has not unreasonably denied any application for site plan or subdivision approval, or other necessary coordinating permits or approvals, and has only denied applications in a manner consistent with the provisions of section 45 of this act.

(b) If the information required pursuant to subsection (a) of this section has been submitted by a municipality in a timely manner, and the secretary makes a determination that the municipality has met the requirements of sections 38 to 49, inclusive, of this act, the secretary shall issue compliance certificates by October first annually. If the secretary determines that the municipality is in material noncompliance with the requirements of sections 38 to 49, inclusive, of this act, the secretary, after notice and hearing pursuant to chapter 54 of the general statutes, may revoke certification. Any revocation of certification, or other sanctions imposed by the secretary under section 47 of this act, shall not affect the validity of the incentive housing zone regulations or the application of such regulations to a pending or approved development application within the incentive housing zone, but shall render the municipality ineligible for financial incentive payments set forth in section 44 of this act.

Sec. 44. (NEW) (Effective July 1, 2007) (a) Upon the determination that (1) the housing incentive zone has been adopted; (2) the time for appeal of the final adoption of the regulations has expired or a final and unappealable judgment upholding such regulations has been issued in any civil action challenging or delaying such regulations; and (3) the municipality has otherwise complied with the requirements of sections 38 to 49, inclusive, of this act, the Secretary of the Office of Policy and Management shall, subject to the availability of funds, make a zone adoption payment to the municipality in the amount of two thousand dollars for each unit of housing that can, as-of-right, be built as part of an incentive housing development within such zone or zones based on the definition of developable land and the minimum as-of-right densities set forth in subdivision (3) of subsection (b) of section 39 of this act.

(b) Subject to the availability of funds secretary shall issue to the municipality a one-time building permit payment for each building permit for a residential housing unit in an approved incentive housing development upon submission by a municipality to the secretary of proof of issuance of such building permit and after determining that (1) no appeal from or challenge to such building permit has been filed or is pending, and (2) such building permit was issued for housing in an incentive housing development not later than five years after the date of the final adoption of incentive housing zone regulations by the zoning commission in accordance with the provisions of subsection (b) of section 42 of this act. The amount of payment shall be two thousand dollars for each multifamily housing unit, duplex unit or townhouse unit and five thousand dollars for each single-family detached unit. Such payment shall be made by the secretary not more than sixty days after receipt of proof of the issuance of building permits and verification of the absence of any appeal or challenge.

(c) Residential units that are located within an approved incentive housing zone that are part of a development that constitutes housing for older persons permitted by the

federal Fair Housing Act, 42 USC 3607 or sections 46a-64c and 46a-64d of the general statutes, shall not be eligible for payments under this section.

Sec. 45. (NEW) (Effective July 1, 2007) (a) A zoning commission shall prescribe, consistent with the provisions of sections 38 to 49 inclusive, of this act, the form of an application for approval of an incentive housing development. The time for and procedures for receipt and processing of applications shall be as provided in chapters 124 and 126 of the general statutes, as applicable. A zoning commission or its agent may, to the extent allowed by the Freedom of Information Act, conduct one or more preliminary or preapplication planning or workshop meetings with regard to an incentive housing zone or development. A zoning commission shall conduct a public hearing in connection with an application for site plan or subdivision approval of an incentive housing development.

(b) The regulations of an incentive housing zone may require the applicant for approval of an incentive housing development to pay the cost of reasonable consulting fees for peer review of the technical aspects of the application for the benefit of the zoning commission. Such fees shall be accounted for separately by the municipality from other moneys and used only for expenses associated with the technical review of the application by consultants who are not otherwise salaried employees of the municipality or the zoning commission. Any amount in the account remaining after payment of all expenses for technical review, including any interest accrued, shall be returned to the applicant not later than forty-five days after the completion of the technical review.

(c) The regulations of the incentive housing zone may provide for the referral of a site plan or subdivision application to other agencies, boards or commissions of the municipality for comment. If a site plan or subdivision application is referred to another agency, board or commission, such agency, board or commission shall provide any comments within the time period contained in section 8-7d of the general statutes, that is applicable to such application. The provisions of this section shall not be construed to affect any other referral required by the general statutes.

(d) An incentive housing development shall be approved by the zoning commission subject only to conditions that are necessary to (1) ensure substantial compliance of the proposed development with the requirements of the incentive housing zone regulations, design standards and, if applicable, subdivision regulations; or (2) mitigate any extraordinary adverse impacts of the development on nearby properties. An application may be denied only on the grounds: (A) The development does not meet the requirements set forth in the incentive housing zone regulations; (B) the applicant failed to submit information and fees required by the regulations and necessary for an adequate and timely review of the design of the development or potential development impacts; or (C) it is not possible to adequately mitigate significant adverse project impacts on nearby properties by means of conditions acceptable to the applicant.

(e) The duration and renewal of an approval of an incentive housing development shall be governed by subsection (i) of section 8-3, subsection (j) of section 8-3, section 8-26c or section 8-26g of the general statutes, as applicable. The time to complete the work

approved shall be extended (1) by the time required to adjudicate to final judgment any appeal from a decision of the commission on an incentive housing development site plan or subdivision plan or any required coordinate permit; (2) by the zoning commission if the applicant is actively pursuing other permits needed for the development; (3) if there is other good cause for the failure to complete such work; or (4) as provided in an approval for a multiphase development.

(f) An applicant for approval of an incentive housing development within an approved incentive housing zone may not make such an application utilizing the provisions of section 8-30g of the general statutes.

(g) Approval of or amendment to regulations or design standards for an incentive housing zone or subzone, or site plan or subdivision approval of an incentive housing development, may be appealed to the Superior Court pursuant to the provisions of section 8-8 or 8-28 of the general statutes.

Sec. 46. (NEW) (Effective July 1, 2007) (a) The Secretary of the Office of Policy and Management shall be responsible for the administration, review and reporting on the incentive housing zone program as provided in sections 38 to 49, inclusive, of this act.

(b) On or before January 1, 2009, and annually thereafter, the secretary shall submit an annual report on the program to the Governor and the General Assembly in accordance with section 11-4a of the general statutes. Each municipality shall submit to the secretary any data requested by the secretary on the incentive housing program. The report shall be based on such data and shall be for the period ending the last day of the prior fiscal year. The report shall (1) identify and describe the status of municipalities actively seeking letters of eligibility; (2) identify approved incentive housing zones and the amounts and anticipated schedule of zone adoption and building permit payments under section 44 of this act during the prior and current fiscal year; (3) summarize the amount of land area zoned for particular types of development in both proposed and approved zones and the number of developments being reviewed by zoning commissions under section 45 of this act, including the number and type of proposed residential units, the number of building permits issued, the number of completed housing units and their type; (4) state the amount of zone adoption and building permit payments made to each municipality; and (5) for the current and immediately succeeding fiscal years, estimate (A) the anticipated number and size of proposed new incentive housing zones over such time period; (B) the number and size of new incentive housing zones that may be approved over such time period; (C) the potential number of residential units to be allowed in such new and proposed incentive housing zones; and (D) anticipated construction of housing over such time period.

Sec. 47. (NEW) (Effective July 1, 2007) (a) The Secretary of the Office of Policy and Management may require the municipality to repay to the state all or part of the payments or reimbursements made to a municipality under sections 38 to 49, inclusive, of this act upon determination by the secretary that the municipality has (1) amended or repealed the designation of an incentive housing zone without the approval of the secretary; or (2) acted to discourage incentive housing development or to impose

arbitrary or unreasonable standards, requirements, delays or barriers to the construction of housing following approval of an incentive housing zone.

(b) The secretary may adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to implement the provisions of this section.

Sec. 48. (NEW) (Effective July 1, 2007) Within available appropriations, the Secretary of the Office of Policy and Management may make grants to municipalities for the purpose of providing technical assistance in the planning of incentive housing zones, the adoption of incentive housing zone regulations and design standards, the review and revision as needed of applicable subdivision regulations and applications to the secretary for preliminary or final approval as set forth in sections 38 to 49, inclusive, of this act. The secretary may adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to implement the provisions of this section.

Sec. 49. (NEW) (Effective July 1, 2007) Within available appropriations, the Commissioner of Economic and Community Development, in consultation with the Secretary of the Office of Policy and Management, may make grants to nonprofit housing assistance or nonprofit housing development organizations in order to support technical assistance planning, predevelopment, development, construction and management of housing developments. The commissioner may adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to implement the provisions of this section.