



# 2021 Guide to Legislation Impacting Development and Land Use Procedures

This guide summarizes legislation passed by the Connecticut General Assembly in 2021 and incorporates material prepared by Connecticut's Office of Legislative Research. As with any summarization of law, additional important details may exist in the statute that are not included herein. Please consult the original legislative language and/or an attorney for confirmation of any legal interpretation.

Corrections/questions/comments? Contact [ctplanners@gmail.com](mailto:ctplanners@gmail.com).

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# Accessory Dwelling Units (ADUs)

**ADUs allowed by default, with ability to opt out:** PA 21-29 establishes default provisions that allow construction of ADUs (referred to in the Act as “accessory apartments”) on lots accompanying single-family homes, unless a municipality chooses to opt out of this provision by January 1, 2023. To opt out, the Zoning Commission (or joint Planning & Zoning Commission) must hold a public hearing, approve the opt out with a 2/3 majority, and publish notice of the decision. The governing body must also vote to opt out with a 2/3 majority (Board of Selectmen in town meeting towns). In municipalities whose ADU regulations conflict with the new State requirements and who do not opt-out by January 1, 2023, the applicable state provision will override any conflicting local requirement.

**Limits on ADU requirements:** In addition to allowing ADUs accompanying single-family homes, PA 21-29 places limits on other conditions of approval, including:

- ADUs are not restricted to homeowners or relatives of occupant of primary structure
- Approval process shall not require a public hearing, special permit or special exception; and decisions must be rendered within 65 days of application
- Permission to construct an ADU shall not be conditional to correcting a non-conformity or requiring fire sprinklers if they are not required by the fire code for the principal dwelling
- Regulations shall not require ADUs to have an exterior door, be connected to the primary structure, or have more than one parking space
- Regulations must allow maximum ADU size of at least 1,000 sf or 30% of the size of the primary structure, whichever is smaller
- The construction of an ADU may not trigger more restrictive lot coverage requirements than applicable to the primary home, require greater setbacks than are required for the primary home, require greater height, landscaping, and architectural design standards than apply to single-family dwellings
- ADUs shall not be required to be affordable
- Municipalities may regulate the use of ADUs as short term rentals
- ADUs shall not be required to be served by separate utilities and shared septic systems shall not be considered “community wastewater systems” for regulatory purposes

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# Multifamily Housing

PA 21-29 strengthens municipal obligations to enable multifamily housing and housing for households at different incomes. SB 1202 also includes provisions to support improved housing access.

**Fair Fees for Multifamily and Affordable Housing Reviews:** PA 21-29 directs that application review fees for applications for multifamily housing and/or 8-30g housing must not be disproportionately high compared to fees charged for applications for single-family housing. Municipalities are authorized to enact regulations permitting fees to cover the cost of necessary technical consultants.

**No numerical caps:** PA 21-29 restricts municipalities from placing a numerical or percentage cap on the total number of multifamily homes in a district.

**Minimum unit size requirements:** PA 21-29 prohibits municipalities from establishing minimum unit sizes that are larger than the minimum unit size established by Building Code.

**Stronger obligation to zone to enable housing opportunities:** PA 21-29 requires zoning to provide for opportunities for housing, including multifamily housing, and to allow for housing that meets the needs outlined in the State Plan of Conservation and Development and Consolidated Plan for Housing and Community Development. Previous language required that zoning merely "encourage" and "promote" such housing.

**Municipal Affordable Housing Plans:** PA 21-29 establishes an initial deadline of June 1, 2022 for municipalities to have adopted their first Affordable Housing Plans (and every five years thereafter) as required by CGS Section 8-30j. It also explicitly allows Affordable Housing Plans to be updated concurrently with the Plan of Conservation & Development (for one of the two five-year periods within the 10-year POCD cycle)

**Commission on Connecticut's Housing Development and Future:** PA 21-29 establishes a temporary commission to evaluate policies related to land use, conservation, housing affordability, and infrastructure. The Commission will submit two reports, in 2022 and 2023, making recommendations for changes to zoning enabling statutes, to the process for adopting and implementation of State plans, and for guidance and incentives for municipal compliance with Affordable Housing Plan requirements and obligations to enable opportunities for housing, as well as measurement of compliance. The Commission will also make recommendations on sewage treatment regulations affecting housing, as well as model design guidelines and associated education and training on the guidelines.

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**State housing analysis requirement:** SB 1202 § 62 (ANALYSIS OF HOUSING FUNDING ALLOCATION AND SEGREGATION) requires the OPM secretary to collect, analyze, and report on data related to existing state and federal housing programs and economic and racial segregation (initial report by Jan 1, 2022, and then every two years).

## Outdoor Dining

March 31, 2021 through March 31, 2022:

Special Act 21-3 essentially extends the protocols governing outdoor dining that were previously in place under Executive Order 7MM, including:

- 10-day turnaround on applications
- Relaxed documentation requirements for applications
- Conditions for use of public sidewalks and pedestrian pathways
- Automatic extension of approvals for outdoor dining approved under Executive Order 7MM
- Waiving of minimum parking requirements to enable outdoor dining.

Beginning April 1, 2022:

SB 1202 (Budget Implementer Bill) § 196 requires municipal zoning to allow outdoor food and beverage services as an accessory use to a licensed food establishment.

OLR Summary:

Under the bill, food establishments may provide outdoor dining as-of-right unless the food establishment is a nonconforming use (i.e., if a food establishment does not comply with current zoning regulations, it is not allowed to offer outdoor dining as-of-right). Under the bill, a food establishment must seek an administrative site plan review to determine whether the proposed outdoor dining use conforms with zoning requirements not contemplated by the bill (e.g., regulations unrelated to providing pedestrian pathways and parking). If outdoor dining is approved, food establishments can offer it until 9:00 p.m. or later if allowed by the zoning commission. The bill does not specify an application, approval, or appeals procedure.

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# Recreational Cannabis

**Use of Cannabis by individuals age 21 and older:** SB 1201 legalizes the use of certain cannabis products in Connecticut by individuals 21 and older and establishes a framework for licensing of recreational cannabis producers and sellers.

## Key Definitions

- **Cannabis establishment:** a producer, dispensary, manufacturer, retailer, packager, or delivery service/transporter
- **Cultivator:** a large grower with an establishment not less than 15,000 square feet of grow space
- **Delivery service:** delivers cannabis products
- **Hybrid retailer:** establishment licensed to sell cannabis and medical marijuana
- **Food and beverage manufacturer:** acquires cannabis to produce food and beverages (edible cannabis products)
- **Micro-cultivator:** small grower with a grow space of 2,000 to 10,000 square feet
- **Retailer:** sells cannabis to consumers and research programs

**Municipal Tax Revenues:** Under SB 1201, a municipality will receive the proceeds of a 3% municipal sales tax on the gross receipts from the sale of cannabis by a cannabis or hybrid retailer or micro-cultivator operating within the municipality. This revenue is in addition to state taxes on recreational cannabis sales. Municipal tax proceeds must be used for the following purposes:

1. streetscape improvements and other neighborhood developments in communities where cannabis or hybrid retailers or micro-cultivators are located;
2. education programs or youth employment and training programs in the municipality;
3. services for individuals living in the municipality who were released from DOC custody, probation, or parole;
4. mental health or addiction services;
5. youth service bureaus and municipal juvenile review boards; and
6. community civic engagement efforts.

**Obligation for municipal zoning to address cannabis:** SB 1201 § 148 authorizes municipalities to enact certain zoning regulations or ordinances for cannabis establishments. If municipal zoning is silent as to cannabis establishments, these establishments shall be regulated as similar uses would be. A municipality may grant zoning approval to no more than one retail and one micro-cultivator for every 25,000 residents. The Commissioner of the Connecticut Department of Consumer Protection (DCP) may establish a new numerical cap on July 1, 2024.

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Municipal zoning regulations may establish rules regulating the following regarding cannabis establishments:

1. prohibit them from opening (i.e. prohibit their operation)
2. reasonably restrict their hours and signage
3. restrict their proximity to religious institutions, schools, charitable institutions, hospitals, veterans' homes, or certain military establishments.

**Obligation to report changes to zoning affecting cannabis establishments:** PA 1201 requires municipal chief zoning officials to report zoning changes related to cannabis to the OPM secretary and DCP within 14 days after adopting change. "Chief Zoning Official" is not defined.

**New zoning regulations do not apply to existing establishments:** PA 1201 generally prohibits any restrictions on cannabis establishment hours, zoning, or signage from applying to existing businesses until five years after the restriction is adopted. This delay does not apply if the business converts to a different license type.

**No municipal authority over delivery or transport:** § 83 forbids municipalities from prohibiting delivery or transport of cannabis products by authorized individuals.

**Zoning approvals needed for final license:** SB 1201 § 35 requires that applicants for final cannabis establishment licenses certify that they have any necessary local zoning approval for the cannabis establishment operation.

**Petition for municipal referendum:** SB 1201 § 83 establishes that municipal electors may petition for referendum on whether to allow local sale of recreation marijuana. Existing establishments would not be affected.

**Regulating cannabis use on municipal and private property.** SB 1201 § 84 states that municipalities may regulate the burning of cannabis products on municipal property, and in the outdoor sections of restaurants. Municipalities with more than 50,000 residents must designate a place where public consumption of cannabis is permitted. Note that this provision does not address consumption of edible cannabis products.

**Cannabis production not agriculture:** SB 1201 § 37 states that cannabis production does not qualify as agriculture as defined by Subsection Q of section 1.1 of the Connecticut General Statutes.

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# Traffic and Parking

**Local Speed Limit Authority:** Public Act 21-28 allows municipalities to establish speed limits on local roads without OSTA approval and allows for the establishment of pedestrian safety zones with speed limits as low as 20 mph in downtown districts, community centers, and areas around hospitals.

**Evaluation of traffic and bike/ped impacts:** PA 21-28 requires the Office of State Traffic Administration (OSTA) to consider major traffic generators' impact on bicycle and pedestrian access and safety when awarding certificates of operation. PA 21-29 allows municipalities to measure traffic impacts of proposed development by estimates of vehicle miles traveled (VMT) or vehicle trips expected to be generated by the proposed development, instead of or in addition to the standard "Level of Service" process. The law allows consideration of traffic mitigation strategies such as reducing the amount of required parking, or incorporating infrastructure for bicyclists, pedestrians, and transit riders. These changes are intended to promote developments which are less dependent on private vehicles and improve conditions for bicyclists, pedestrians, and transit users.

**Funding for bicycle and pedestrian trails:** PA 21-28 requires that greenways commemorative plate fees be deposited into a dedicated account and used to fund grant programs for greenways and other bicycle and pedestrian trails.

**Reduced parking requirements:** Public Act 21-29 requires that zoning must not require parking in excess of 1 space per studio or 1-bedroom unit, or 2 spaces for larger housing units, unless a municipality opts out of this requirement through a two-step process requiring action by both the (planning and) zoning commission and the governing body (board of selectman in town meeting municipalities) – similar to the ADU opt-out.

**Vision Zero Council:** PA 21-28 establishes a Vision Zero Council and charges it with developing a statewide policy to eliminate all transportation-related fatalities and severe injuries.

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# Land Use Approval Expirations

**Inland Wetlands permits:** PA 21-34 § 2 delays the effective date of municipal inland wetlands permits to coincide with the effective period of related local land use approvals. Under the bill, if the inland wetlands permit is just one of the local land use approvals required to develop a property, the wetlands permit does not take effect until the other local approvals are effective. Inland wetlands permits are generally valid for the same length of time as the other land use approvals issued for the development, up to a maximum of 10 years.

**Special Permit/Exception expirations:** PA 21-163 establishes a minimum validity period for unexpired special permit or exception approvals that (1) were granted before July 1, 2011, and (2) specified a deadline by which all work in connection with the approval must be completed. Under the bill, these approvals are valid for at least 19 years after the approval is granted. The bill specifies that (1) the applicable land use board, commission, or agency may extend these approvals beyond 19 years and (2) this minimum 19-year validity period applies to special permits or exceptions approved by a municipality exercising land use powers under the statutes or a special act. For approvals granted between July 1, 2011 and the date of the bill's passage, PA 21-34 establishes a minimum validity period for special permit or exception approvals that were unexpired on March 10, 2020; and that specified a deadline by which all work in connection with the approval must be completed. Under the bill, these approvals are valid for a minimum of 19 years after the approval is granted.

**Expiration of subdivision approvals:** PA 21-163 extends the duration of subdivision approvals for projects with at least 400 dwelling units approved before July 1, 2011 from 14 to 19 years

**Five-year extension of other approvals:** PA 21-63 bill also extends by five years the minimum initial approval period for approvals granted before July 1, 2011:

1. site plan approvals (except for projects containing at least 400 dwelling units or having an area of 400,000 square feet or more);
2. subdivision approvals for projects with fewer than 400 dwelling units; and
3. wetlands permits.

The effect of these changes is that these initial approvals must be valid for at least 14 years, rather than at least nine years, as under current law. The bill correspondingly extends the extended deadlines for these approvals from 14 to 19 years and notes that in general, these changes apply to permits granted by municipalities exercising land use powers under special act. Likewise, PA 21-34 makes similar changes to expiration dates of approvals for projects approved from July 1, 2011 to the date of bill pages, but before the bill's passage that were unexpired on March 10, 2020. Under PA 21-34I, except for large residential subdivisions, the initial deadline for these approvals must be at least 14 years after approval, and the extended deadline cannot be more than 19 years after approval. Large residential subdivision approvals are valid for 19 years. Local boards or agencies may approve extensions, but the bill caps the total

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duration of an approval, including extensions, at 19 years (except special permits or exceptions, see above).

Note: Executive Order 7-JJ, which extended many land use approvals for the duration of the pandemic, expired June 30, 2021.

## Additional Zoning Requirements

**Required/allowed goals and considerations for zoning:** PA 21-29 updates the language of zoning enabling statute 8-2 to remove language allowing zoning to be used to "prevent the overcrowding of land and avoid undue concentration of population;" and requires that regulations be designed to protect historic, tribal, cultural, and environmental resources; consider impacts to adjacent municipalities; address disparities in housing needs and access to opportunities including employment and education; promote efficient application review; and affirmatively further the purposes of the Federal Fair Housing Act. Affirmatively furthering fair housing generally refers to proactive actions to reduce barriers to fair housing. Any consideration of "character" must be to character defined with clear and explicit "physical characteristics". Zoning may not be used to deny applications on the basis of the income level or source of income of an applicant or end user.

**Explicit authorities for overlay zones, floating zones, and planned development districts, and energy conservation:** PA 21-29 explicitly allows zoning to adopt regulations for overlay zones, floating zones, and planned development districts (which were not explicitly allowed in existing statute).

**Cottage Food Activities:** PA 21-29 directs that zoning must not prohibit "Cottage Food" activities in residential zones (i.e, small-scale home-based food production)

**Regulation of Mobile Homes:** Existing statute provides that regulations not treat manufactured homes substantially differently from other types of housing for the purpose of permitting. PA 21-29 adds larger mobile manufactured homes to this provision (length of smallest dimension of mobile home must be greater than 22 feet for this provision to apply).

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# Meeting Procedures (including Remote)

SB 1202 §§ 161-168 enable meetings to be held fully in-person, fully remotely, or as hybrid meetings during the period of time July 1, 2021 – April 30, 2022. §§ 171-189 make numerous changes allowing municipal entities and other public agencies to conduct business electronically; generally, the changes allow specified (1) notices and applications to be sent electronically and (2) hearings or meetings to be held using electronic equipment

- For the purpose of rules regarding remote meetings, § 161 defines "Electronic equipment" as any technology that facilitates real-time public access to meetings, including, but not limited to, telephonic, video or other conferencing platforms.
- § 163 requires notice of remote meetings to be published at least 48 hours in advance and agendas must be published at least 24 hours in advance. Such notice and agenda shall include instructions for the public to attend and provide comment or otherwise participate in the meeting, by means of electronic equipment or in person, as applicable and permitted by law. Publication shall include:
  - direct notification in writing or by electronic transmission to each member of the public agency and
  - post a notice that such agency intends to conduct the meeting solely or in part by means of electronic equipment
    - in the agency's regular office or place of business,
    - in the office of the clerk of such subdivision for any public agency of a political subdivision of the state that is not a quasi-public agency, or
    - in the office of the clerk of each municipal member of any multitown district or agency, and
    - if the agency has an Internet web site, on such Internet web site.
- § 163 also requires that
  - agencies provide the opportunity for agency members (e.g. commissioners) to attend in-person meetings electronically.
  - minutes of hybrid meetings note how each member attended.
  - agencies holding a fully remote meeting provide accommodations to any member of the public requesting a physical location and electronic equipment to participate in the meeting, if the request is submitted in writing at least 24 hours in advance, and provide members of the public attending remotely the same opportunities to provide comment or testimony as would be provided were the meeting held in person.
  - transcriptions or recordings of meetings held fully remotely be posted on the agency's Internet web site and made available to the public to view, listen to and copy in the agency's office or regular place of business not later than seven days after the meeting and for not less than forty-five days thereafter.

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- if a quorum of members is meeting in person, the agency must also allow members of the public to attend in person at the same location.
  - votes taken during remote meetings must be taken by roll call unless they are unanimous.
  - remote meeting participants must make a good faith effort to state their name and title, if applicable, prior to speaking.
  - meetings interrupted by technical difficulties may be resumed not more than two hours after the interruption, either electronically or in person. Agency may announce any preplanned procedures for potential interruptions.
  - moderators may remove a member of the public attending remotely if the member is causing disorder and refuses to conform to order.
- § 173 allows zoning enforcement hearings to be conducted in person or electronically.
  - § 168 requires the Connecticut Advisory Commission on Intergovernmental Relations to conduct a study on remote meeting procedures by February 1, 2022, including recommendations concerning best practices and the identification of funding sources for implementation of remote participation and voting.
  - Refer to SB 1202 for additional provisions.
  - SB 1202 **DOES NOT** remove preexisting requirements for newspaper publication.

## GIS

**OPM GIS information officer and GIS Council:** SB 1202 §§ 90-92 (AN ACT CONCERNING GEOGRAPHIC INFORMATION SYSTEMS) creates a new GIS office within OPM and establishes a GIS information officer to oversee the office and its staff; and establishes a GIS Council to consult with the new information officer on matters regarding free and public GIS data.

**Funding for state GIS capacity:** SB 1202 § 341 also allocates \$9.5 million in ARPA funds toward building statewide GIS capacity for broadband mapping/data and other critical services supporting remote work, health, and education.

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# Commissioner Training

PA 21-29 establishes ongoing training requirements for land use commissioners. Connecticut’s OPM Secretary shall establish guidelines for training by January 1, 2022 in consultation with CAZEO, CCM, CCAPA, CLEAR’s Land Use Academy, the CT Bar Association, Councils of Governments, and other nonprofit or education institutions that provide land use training. If the Secretary does not issue guidelines, such providers may create and administer appropriate training.

<i>By January 1, 2024</i>	Any member serving on a planning commission, zoning commission, combined planning/zoning commission, or zoning board of appeals as of January 1, 2023 must complete initial training, and complete additional training every two years thereafter
<i>By March 1, 2024</i>	Commissions/Boards shall submit statement affirming compliance to municipality’s legislative body (or Board of Selectman in town meeting towns)
Training Requirements	Four hours of training, which must include at least one hour concerning affordable and fair housing policies

# ZEO Credentials

PA 21-29 requires that Zoning Enforcement Officers be certified by the CT Association of Zoning Enforcement Officials (CAZEO) as of January 1, 2023, and annually thereafter, and maintain certification. The act does not specify whether either of CAZEO’s certifications (CZET or CZEO) would satisfy this requirement.