



September 17, 2020

Tanya Hughes, Executive Director
State of Connecticut
Commission on Human Rights and Opportunities
450 Columbus Boulevard, Suite 2
Hartford, CT 06103-1835
via email to: Tanya.Hughes@ct.gov

Dear Ms. Hughes:

On behalf of DeSegregate Connecticut, I write to urge the Commission on Human Rights and Opportunities (CHRO) to update its prior reports regarding the disparate impacts of our State's land use regime on the poor and people of color.

For at least four decades, CHRO has focused on the issue of zoning, as part of its overall goal of advancing equal opportunity and working to eliminate discrimination. In April 1978, the Commission published "A Study of Zoning in CT," and the next month it published "The Status of Equal Housing Opportunity," followed by a "Housing Discrimination and Opportunities" report in 1986. Over the last several months, public attention has been focused on structural inequality, and exclusionary zoning remedies have even become part of the national political debate. Indeed, CHRO recently announced its opposition to the Trump Administration's rescission of the federal Affirmatively Furthering Fair Housing Rule. Given a rapidly changing political dynamic in which it may be possible to enact change, we believe it is time for CHRO to update its prior studies of exclusionary zoning practices.

By way of introduction, DeSegregate Connecticut is a coalition of forty organizations¹ and numerous individuals who believe that our land use laws have resulted in segregation and who are pushing for statewide land use reform legislation, which we believe will create more equitable communities. Please note that this particular letter has been supported by a volunteer legal team, and it should be considered an effort distinct from the legislative advocacy being conducted in coordination with our organizational coalition members.

WHY THIS ISSUE DESERVES YOUR ATTENTION

Land use laws dictate nearly everything that gets built in a community. Accordingly, they impact social bonds, economic relationships, public health, life expectancy, and even individual prosperity. Land use laws can be an incredible force for good. Done well, they can help shape a more equal, more sustainable, and more well-connected world. Indeed, a wave of reforms around the country, including in nearby Massachusetts and Vermont,

have started to reverse a century of bad policies that have been entrenched since zoning and planning rose to prominence in the 1920s.

Not in Connecticut. Connecticut is among the most racially segregated states in the country, and it is home to the nation's most segregated metropolitan area.² This state of affairs is no accident. It is the result of century-old government laws and policies that fail to incorporate principles of equity and inclusion, and are too often enacted to defend the status quo. Restrictive zoning requirements,³ costly review processes,⁴ and arbitrary impediments⁵ thwart affordable and multifamily housing development. As a result, Connecticut's high-resource neighborhoods remain inaccessible to those who can't afford them, creating segregation along economic and racial lines.

We must all better understand the disparate impacts of laws and policies on certain groups. At the state level, the zoning and planning enabling statutes sets forth what municipalities may and may not do when they regulate land use. Both in what they say and what they do not say, these state laws enable towns to enact policies that marginalize vulnerable populations. While non-compliance with longstanding statutory zoning obligations must be addressed and appropriately remedied, it would also be useful for the State to provide further guidance to municipalities about how to reverse decades of segregation. This guidance should encompass both further restricting exclusionary practices and policies and enacting meaningful oversight and enforcement mechanisms – all as part of a creating an equal playing field for the development of affordable and multifamily housing options throughout the entire state.

Until appropriate action is taken, we believe it is our responsibility to expand understanding about the negative effects of our laws. Given the disparate impact that we believe Connecticut's land use regime has on people of color and the poor, we strongly urge the Commission to issue a public report about the discriminatory effects of this system.

HISTORICAL BACKGROUND

Since their inception, land use laws have substantially contributed to residential segregation throughout the country, and in Connecticut in particular. Beginning in 1910, cities from Baltimore to St. Louis to New Orleans became some of the first cities to enact zoning codes, which explicitly designated separate residential zones for white and black residents. After the Supreme Court struck down this practice as unconstitutional in 1917,⁶ public and private entities entrenched residential segregation by other means: property owners wrote racially restrictive covenants into their deeds, real estate agents engaged in racial steering and blockbusting, and the Federal Housing Administration (FHA) formalized race-based neighborhood classifications through its redlining policies.

As these tactics were struck down or abolished, municipalities enacted exclusionary zoning ordinances⁷ to achieve the same end: residential segregation. This historical trajectory played out not just nationwide but right here in Connecticut. Deed restrictions,⁸ racial steering,⁹ and redlining¹⁰ were prevalent in Connecticut, shaping the racial makeup of its cities and its towns. After these practices were outlawed, many towns tightened land use controls to keep out poorer residents and racial minorities. They did this with the blessing of our State legislature, which set the rules of the land use game yet did not enforce them, thus contributing to growing inequities.

PRESENT SITUATION

The walls erected by exclusionary land use policies in the mid-twentieth century remain in place today. Indeed, there are indications that the problem is getting worse. Of Connecticut's 167 municipalities with zoning, only 19 allow housing with three or more units without requiring special permits.¹¹ According to our research, twenty-three municipalities have neighborhoods that require four acres or more to build a single unit of housing.¹² Many ban or effectively ban multi-family housing. Even in our larger cities, exclusionary zoning laws persist.

This artificial constriction on housing supply excludes Black, Hispanic, and other racial minority residents from Connecticut's high-resource communities. There is ample evidence that the resultant segregation is not a bug but a feature of restrictive land use laws in Connecticut.¹³ The parallelism between redlining maps—which distinguish between green, “best” neighborhoods and red, “hazardous” neighborhoods—and contemporary zoning maps—which invariably allow multifamily housing in formerly “red” zones and only single-family homes in green zones—make the connection between historic, overt forms of discrimination and today's more subtle variations apparent. Housing scholars recently writing as amici to the U.S. Supreme Court agree that too many suburbs “lock in racial exclusivity with facially-neutral zoning ordinances that forbid construction of affordable housing. Requiring larger lot development and low-density zoning depresses growth of rental housing, increases housing costs, and limits the influx of African-American and Latino households.”¹⁴

But even if this outcome is an unintended side effect of land use regulations, it is still an unacceptable one. Children who grow up in low-income, segregated neighborhoods make less money, go to college at lower rates, and have other measurably worse life outcomes than those who grew up in integrated neighborhoods.¹⁵ In a state where it is 3.5 times more expensive to live near a high-achieving school than a low-achieving one,¹⁶ these outcomes are all but ordained by the state's land use laws. Racially segregated neighborhoods have much larger income gaps by race,¹⁷ and lack sufficient access to grocery stores,¹⁸ child care,¹⁹ and vital health services.²⁰ Meanwhile, economic opportunity is concentrated in Connecticut's mostly white suburbs,²¹ beyond the reach of non-white residents priced out of these exclusionary areas. Unfortunately, Connecticut is consistent with national trends that show that between 1970 and 2007, there has been a steady decline in families living in middle-class neighborhoods, with a more than doubling (to 31 percent) of families living in either highly affluent or highly impoverished communities.²²

Regardless of the motives underlying them, land use laws in Connecticut produce intolerable results that must be remedied.

LEGAL STANDARD

There is ample reason to suspect that land use laws in Connecticut violate both the federal and state Fair Housing Acts. Both Acts make it unlawful “to refuse to sell or rent ... or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.”²³ According to the Connecticut Supreme Court, the phrase “‘otherwise make available’ has been interpreted to reach a wide variety of discriminatory housing practices, including discriminatory zoning restrictions.”²⁴ As CHRO referees have consistently recognized, “[F]air housing laws supersede zoning restrictions.”²⁵

It is likely that our statewide land use regime violates the FHA based on a disparate impact theory of liability. Per the CHRO's definition, "[d]isparate impact is the uniform application of a rule or policy to all individuals that has the effect of distinguishing or differentiating members of protected classes."²⁶ The Supreme Court recently affirmed that zoning regulations that have a disparate impact on a protected class violate the FHA.²⁷ Importantly, under the FHA, the fact of a regulation adversely affecting "white as well as nonwhite people ... is not by itself an obstacle to relief."²⁸

As stated above, Connecticut's land use laws produce a disparate impact on racial minorities, a protected class under the FHA. Connecticut's most affluent areas—where resources are most concentrated—are home to vanishingly few people of color. Exclusionary zoning laws play a huge part in this dynamic, restricting the housing opportunities for low-income people of color to those available in less prosperous communities.²⁹ Consequently, Black and Latino residents are less able to access good jobs, well-funded social services, and high-achieving schools for their kids. They also demonstrate high rates of food insecurity and transportation insecurity.

A June 2020 study by Data Haven shows health and life expectancy are highly correlated with socioeconomic conditions that are locked in place by zoning.³⁰ As just one example, children born in wealthy towns will live, on average, six years longer than those born in our central cities, and a child growing in Westport will live nineteen years longer than a child growing up in Bridgeport.³¹ Our cities are not immune: Data Haven finds that children living in one New Haven neighborhood will live fourteen years longer than children living in another. The COVID-19 pandemic has magnified longstanding socioeconomic gaps. These facts thus provide a strong foundation for a prima facie showing of disparate impact.

Disparate-impact liability under the FHA requires the "removal of artificial, arbitrary, and unnecessary barriers" to fair housing.³² Thus, if our state laws enable, or certain local zoning law practices common to many communities have, a disparate impact on a protected class, the government must demonstrate that it furthers a compelling government interest.³³ Federal courts have regularly held that the justifications for exclusionary zoning do not pass this threshold. In one case, the Eighth Circuit held that a municipality's interests in road and traffic control, prevention of school overcrowding, and the prevention of devaluation of adjacent single-family homes did not justify a zoning ordinance that prohibited the construction of multifamily dwellings.³⁴ In another, the Second Circuit held that a town's interest in protecting its overburdened sewer system did not justify a restrictive zoning ordinance because the town was at fault for failing to maintain and upgrade the sewer system.³⁵

CHRO is a state agency with investigatory powers and jurisdiction over fair housing matters. In 1977, Supreme Court Justice William Brennan called upon state agencies and courts to interpret provisions of state law more expansively than their analogous federal counterparts, arguing that interpretive heterogeneity among the states would further progressive goals and advance justice through the courts.³⁶ This call for judicial federalism rings true today. Connecticut courts have already embraced more far-reaching interpretations of state civil rights laws relative to their analogous federal laws.³⁷

CONCLUSION

In sum, we strongly encourage CHRO to analyze the civil rights impacts of our state's zoning regime. Understanding that the CHRO has limited resources, we respectfully suggest that your review focus on common practices – such as single-family use zoning, minimum lot size requirements, minimum

parking requirements, and maximum lot coverage – enabled by our very outdated state enabling laws, rather than conducting a deep dive into each or even a few of the 167 towns with zoning laws. We are happy to share any of our data, which we are developing through the fall, should it be of interest. Our hope is that if your report finds disparate impact, as we suspect you will, then your report will help to confirm the urgent need for statewide reform for State legislators and the public.

I was struck by a presentation a few weeks ago by noted author Richard Rothstein at an event hosted by the Connecticut Commission on Women, Children, Seniors, Equity, and Opportunity. What he said was that we have long legislated to ban segregation of lunch counters and buses. And yet we've shrugged off the role of governments and laws in segregating something far more important: our neighborhoods. We have rationalized segregation, Rothstein said, by saying that patterns of development result from purely private choices.

We can no longer rationalize de facto segregation. We can no longer ignore its effects: educational inequities, food and transportation insecurity, health disparities, and even the condemnation of a shorter life. We must demand more of our laws, our governments, and our leaders. We must use zoning for good.

On behalf of the legal team and various individuals involved with Desegregate Connecticut, thank you again for considering updating your prior reports, which we hope will illuminate for the public this vitally important topic.

Best regards,



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Lead Organizer
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cc: Kristen Daniels, CHRO, Kristen.Daniels@ct.gov
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- 1 For a full list of the organizations involved with the *legislative* side of Desegregate Connecticut, see www.desegregatect.org/supporters. Because the organizations primarily work on the *legislative* side of Desegregate Connecticut, this letter should not be construed to imply that these organizations are filing this request to the CHRO in their individual (or collective) capacities. In particular, the Connecticut Conference of Municipalities does not support the call for a CHRO investigation as a necessary remedy at this time, given the availability of existing research on this matter and the good-faith efforts of so many towns to move toward a more equitable future.
- 2 SEAN F. REARDON & KENDRA BISCHOFF, GROWTH IN RESIDENTIAL SEGREGATION OF FAMILIES BY INCOME 18 (Nov. 2011), <https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report111111.pdf> (identifying the Bridgeport-Stamford-Norwalk area as the area with the highest levels of family income segregation in the United States as of 2007. This area ranked seventh in metropolitan areas with the largest increases in segregation between 2000 and 2007; the New Haven-Milford metropolitan area was eighteenth nationally on that ranking.).
- 3 See CONNECTICUT FAIR HOUSING CENTER, A GUIDE FOR FAIR AND OPEN COMMUNITIES 5-6 (2013), https://www.ctfairhousing.org/wp-content/uploads/CFHC_Zoning_Guide.pdf
- 4 See Jacqueline Rabe Thomas, *Separated by Design: How Some of America's Richest Towns Fight Affordable Housing*, THE CONN. MIRROR, May 22, 2019, <https://www.propublica.org/article/how-some-of-americas-richest-towns-fight-affordable-housing>
- 5 See e.g. Lisa Prevost, *A Wall Divides a Connecticut Town*, THE N.Y. TIMES, Mar. 15, 2019, <https://www.nytimes.com/2019/03/15/realestate/a-wall-divides-a-connecticut-town.html>.
- 6 *Buchanan v. Warley*, 245 U.S. 60, 82 (1917).
- 7 See generally Marc Seitles, *The Perpetuation of Residential Racial Segregation in America: Historical Discrimination, Modern Forms of Exclusion, and Inclusionary Remedies*, 14 J. LAND USE & ENVTL. L. 89 (1998); Brian J. Connolly, *Promise Unfulfilled? Zoning, Disparate Impact, and Affirmatively Furthering Fair Housing*, 48 URB. LAW. 785 (2016).
- 8 See Mary Daly, *Race Restrictive Covenants in Property Deeds*, CONN. HISTORY (Feb. 23, 2016), <https://connecticuthistory.org/race-restrictive-covenants-in-property-deeds/>.
- 9 See e.g., *Jackie Robinson Buys a Home in Connecticut*, NEW ENGLAND HISTORICAL SOCIETY (2020), <https://www.newenglandhistoricalsociety.com/jackie-robinson-buys-home-connecticut/>.
- 10 See MAPPING INEQUALITY: STAMFORD, DARIEN, AND NEW CANAAN, CT <https://dsl.richmond.edu/panorama/redlining/#loc=10/41.116/-73.466&city=stamford,-darien,-and-new-canaan-ct>.
- 11 *Connecticut Zoning Initiative*, CITIES, SUBURBS & SCHOOLS PROJECT AT TRINITY COLLEGE, <https://commons.trincoll.edu/cssp/zoning/>.
- 12 *Statewide Zoning Code Research*, DESEGREGATE CT (2020) www.desegregatect.org/ (containing a map showing these communities). The towns are: Avon, Bridgewater, Canaan, Cornwall, East Haddam, Goshen, Granby, Greenwich, Guilford, Hebron, Kent, Litchfield, Morris, New Canaan, New Hartford, New Milford, Pomfret, Redding, Roxbury, Scotland, Sherman, Simsbury, and Wallingford.
- 13 See generally NICHOLAS J. ABBOTT, PARENTS, POWER, AND THE PUBLIC GOOD: A COMPARATIVE STUDY OF RACIAL BALANCE POLICIES IN THE STAMFORD AND GREENWICH, CONNECTICUT SCHOOL DISTRICTS (2014) (available on request).
- 14 Brief of Housing Scholars as Amici Curiae Supporting Respondents, *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015).
- 15 Raj Chetty et al., *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Project*, 106 AM. ECON. REV. 4 (2016) <https://scholar.harvard.edu/hendren/publications/effects-exposure-better-neighborhoods-children-new-evidence-moving-opportunity>.
- 16 Jonathan Rothwell, *Housing Costs, Zoning, and Access to High-Scoring Schools*, BROOKINGS INSTITUTE 16 (2012) https://www.brookings.edu/wp-content/uploads/2016/06/0419_school_inequality_rothwell.pdf.
- 17 Joe Cortright, *How Racial Segregation Leads to Income Inequality*, CITY OBSERVATORY, Mar. 8, 2016, http://cityobservatory.org/segregation_and_inequality/.
- 18 Kelly Brooks, *Research Shows Food Deserts More Abundant in Minority Neighborhoods*, JOHNS HOPKINS MAGAZINE, Spring 2014, <https://hub.jhu.edu/magazine/2014/spring/racial-food-deserts/>
- 19 Rasheed Malik et al., *America's Child Care Deserts in 2018*, CTR. AM. PROGRESS, Dec. 6, 2018, <https://www.americanprogress.org/issues/early-childhood/reports/2018/12/06/461643/americas-child-care-deserts-2018/>
- 20 Dennis Thompson, *Many Black Americans Live in Trauma Care Deserts*, U.S. NEWS, Mar. 8, 2019, <https://www.usnews.com/news/health-news/articles/2019-03-08/many-black-americans-live-in-trauma-care-deserts>
- 21 *Connecticut Opportunity Map*, OPEN COMMUNITIES ALLIANCE, https://www.ctoca.org/ct_opportunity_map.

- 22 SEAN F. REARDON & KENDRA BISCHOFF, GROWTH IN RESIDENTIAL SEGREGATION OF FAMILIES BY INCOME 11 (Nov. 2011), <https://s4.ad.brown.edu/Projects/Diversity/Data/Report/report111111.pdf>
- 23 Conn. Gen. Stat. Ann. § 46a-64c (West).
- 24 *AvalonBay Communities, Inc. v. Town of Orange*, 256 Conn. 557, 592 (Conn. 2001).
- 25 *Ward v. Black Point Beach Club*, CHRO No. 0150047 (2002) <https://portal.ct.gov/CHRO/Public-Hearing/Public-Hearing/Ward-v-Black-Point-Beach-Club--0150047-Final-Decision>.
- 26 *Overview of Discrimination Laws*, COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES, <https://www.cga.ct.gov/ps99/pridata/studies/chro%20chapter%20i%20final%20report.htm>
- 27 *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2525 (2015).
- 28 *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1291 (7th Cir. 1977)
- 29 *Connecticut Opportunity Map*, OPEN COMMUNITIES ALLIANCE, https://www.ctoca.org/ct_opportunity_map.
- 30 DATA HAVEN, TOWARDS HEALTH EQUITY IN CONNECTICUT: THE ROLE OF SOCIAL INEQUALITY AND THE IMPACT OF COVID-19 (June 2020), <https://ctdatahaven.org/sites/ctdatahaven/files/DataHaven%20Health%20Equity%20Connecticut%20061820.pdf>.
- 31 *Id.* at 3.
- 32 *Texas Dep't of Hous. & Cmty. Affairs*, 135 S. Ct. at 2522 (quoting *Griggs v. Duke Power Co.*, 401 U.S. 424, 431(1971)).
- 33 *See United States v. City of Black Jack*, 508 F.2d 1179, 1185 n.4 (8th Cir. 1974) (justifying the application of the “compelling interest” standard, normally applied in equal protection cases, to cases brought under the FHA).
- 34 *Id.* at 1186.
- 35 *Kennedy Park Homes Ass'n v. City of Lackawanna*, 436 F.2d 108, 114 (2d Cir. 1970).
- 36 William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977).
- 37 *See e.g. Sheff v. O'Neill*, 238 Conn. 1, 678 A.2d 1267 (1996).