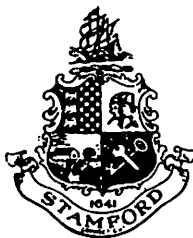


MAYOR  
DANNEL P. MALLOY



CITY OF STAMFORD  
OFFICE OF LEGAL AFFAIRS

888 WASHINGTON BOULEVARD  
P.O. BOX 10152  
STAMFORD, CT 06904-2152  
(203) 977-4081  
FAX (203) 977-5560

DIRECTOR OF LEGAL AFFAIRS  
AND CORPORATION COUNSEL  
ANDREW J. McDONALD

DEPUTY CORPORATION COUNSEL  
SYBIL V. RICHARDS

ASSISTANT CORPORATION COUNSEL  
BARRY J. BOODMAN  
JAMES V. MINOR  
JOHN W. MULLIN, JR.  
KENNETH B. POVODATOR  
BURT ROSENBERG

February 22, 2001

Mr. Robert Deluca  
Mr. Ralph Loglisci  
City of Stamford  
Board of Representatives  
Stamford Government Center - 4<sup>th</sup> Floor  
888 Washington Boulevard  
Stamford, CT

**RE: Affordable Housing Ordinance**

Gentlemen:

Please be advised that I have been provided with the opportunity to draft a response to your request dated December 18, 2000 directed to Andrew McDonald, Director of Legal Affairs for the City of Stamford, for an opinion as to whether the Board of Representatives can legally adopt a local ordinance imposing affordable housing requirements, including the imposition of a mandated percentage of affordable housing units on builders. You have also made the related inquiry as to what would qualify as an affordable housing unit.

The legal analysis of these issues should rightfully begin with the definition of "affordable housing" which is set forth in §8-39a of the Connecticut General Statutes, as follows:

*"As used in this title, "affordable housing" means housing for which persons and families pay thirty per cent or less of their annual income, where such income is less than or equal to the area median income for the municipality in which such housing is located, as determined by the United States Department of Housing and Urban Development." (Emphasis added).*

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To fully appreciate the manner in which the concept of “affordable housing” is implemented at the local level, further reference must be made to the definition of “affordable housing development” as is set forth in §8-30g(a)(1) of the Connecticut General Statutes, which states:

***“Affordable housing development” means a proposed housing development (A) which is assisted housing or (B) in which not less than twenty-five per cent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least thirty years after the initial occupation of the proposed development, (i) such dwelling units shall be sold or rented at, or below, prices which will preserve the units as affordable housing, as defined in section 8-39a. Of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than ten per cent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty per cent of the area median income or sixty per cent of the state median income, whichever is less, and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty per cent of the area median income or eighty per cent of the state median income, whichever is less. . . .”*** (Emphasis added).

One additional definition contained within the General Statutes of which mention should be made in order to gain a full appreciation of the concept of affordable housing is the definition of the term “inclusionary zoning” which is set forth in Connecticut General Statutes, §8-2i(a) as follows:

***“[I]nclusionary zoning” means any zoning regulation, requirement or condition of development imposed by ordinance, regulation or pursuant to any special permit, special exception or subdivision plan which promotes the development of housing affordable to persons and families of low and moderate income, including, but not limited to, (1) the setting aside of a reasonable number of housing units for long term retention as affordable housing through deed restrictions or other means; (2) the use of density bonuses or (3) in lieu of or in addition to such other requirements or conditions, the making of payments into a housing trust fund to be used for constructing, rehabilitating or***

*repairing housing affordable to persons and families of low and moderate income.”* (Emphasis added.).

Of particular importance with respect to the opinion you have requested as to whether the Board of Representatives can, by ordinance, impose affordable housing requirements is the language set forth in Connecticut General Statutes, §8-2i(b) which allows for the restriction of the powers to implement and regulate affordable housing to municipal *zoning authorities* by stating that “[n]otwithstanding the provisions of any special act, any municipality having zoning authority pursuant to this chapter or any special act or having planning authority pursuant to chapter 126 may, by regulation of the body exercising such zoning authority [i.e. the Zoning Board], *implement inclusionary zoning regulations, requirements of conditions.*” (Emphasis added.)

The power of a municipality’s local legislative body to enact an ordinance depends primarily on whether the ordinance is in harmony and consistent with the power delegated to the municipality by the state. Whether that power is defined by special act<sup>1</sup> or by a statute of general application, the action of the General Assembly has fixed the policy of the state, and a municipality, by its local legislative body, cannot proceed in a way which is contrary to that policy. Bredice v. Norwalk, 152 Conn. 287, 292 (1964). An attempt, by ordinance, to exercise a function authorized by the city charter in a manner inconsistent with the provisions of the charter is ineffective and invalid. Caldrello v. Planning Board, 193 Conn. 387, 391 (1984). “It has been well established that a city’s charter is the fountainhead of all municipal powers. . . The charter serves as an enabling act, both creating power and prescribing the form in which it must be exercised.” Norwich v. Housing Authority, 216 Conn. 112, 125 (1990); Stamford Ridgeway Associates v. Board of Representatives, 214 Conn. 407, 423 (1990). “Where the municipal charter prescribes a particular procedure by which a specific act is to be done or a power is to be performed, that procedure must be followed for the act to be lawful.” Caldrello, Id., at 391. The propriety of the adoption of any local ordinance must be assessed in terms of whether the adoption was within the scope of the municipality’s authority as set forth in its city charter. Norwich v. Housing Authority, Id., at 125.

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<sup>1</sup> The Stamford City Charter originally appeared as 1947, Special Act No. 312, which was approved by the state legislature on May 21, 1947. It was adopted by the electors of Stamford at a special election held on November 3, 1947 and became effective on April 15, 1949. Agents of a city, including [the board of representatives], have no source of authority beyond the charter. Stamford Ridgeway Associates v. Board of Representatives, 214 Conn. 407, 423 (1990).

In light of these well established legal principles under Connecticut law regarding the municipal power to enact ordinances within the context of the applicable city charter, a review of the provisions of the Stamford City Charter setting forth the respective powers of the City of Stamford Board of Representatives and Zoning Board is necessary in order to properly analyze the issue presented.

The power of the Board of Representatives to enact local ordinances is set forth in § C2-10-2(1) of the Stamford City Charter which provides, in pertinent part, that the Board of Representatives has the power “[t]o enact ordinances *in the manner provided in this Charter not inconsistent with law, or this Charter*, for the government of the City and the management of its business, for the preservation of good order, peace and health, for the welfare and safety of its inhabitants and the protection and security of their property. . .” (Emphasis added.).

The powers and duties of the City of Stamford Zoning Board are described in §C6-40-1 of the Stamford City Charter which states, in pertinent part, as follows:

“The Zoning Board is authorized to regulate the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land or trade, industry, residence or other purposes. . . Said Board may divide the City into districts of such number, shape and area as may be best suited to carry out the purposes of this Chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. . .”


Clearly, this broad delegation of power under the Stamford City Charter to the Stamford Zoning Board to regulate (1) the size, location and use of buildings, and (2) the density of population are land use controls which are necessary prerequisites to the creation, implementation and regulation of the concepts espoused by the General Assembly of an “affordable housing development” as defined by Connecticut General Statutes, §8-30g(a)(1), and “inclusionary zoning” pursuant to Connecticut General Statutes, §8-2i(a). Since the Stamford City Charter specifically empowers the Zoning Board as the local municipal body authorized to exercise the power to determine the appropriate uses for land within the confines of the

municipality, and the density of permissible development - factors intrinsic to the development of affordable housing - any attempt, by ordinance, to usurp the Zoning Board's control over such decision-making must necessarily yield to the City Charter. Bredice v. Norwalk, 152 Conn. 287, 294-295 (1964). To allow the Board of Representatives, by ordinance, to exercise such powers would constitute an impermissible local legislative action in direct conflict with the Stamford City Charter, as well as the provisions of Connecticut General Statutes, §8-2i(b) empowering a local zoning authority to implement inclusionary zoning regulations, requirements or conditions. After a city or town has adopted zoning, the power to enact and to change zoning regulations is vested exclusively in the city or town's zoning commission, and whatever a zoning commission may do in this regard is in no way subject to the control of a town meeting or a municipality's local legislative body. Olson v. Avon, 143 Conn. 448, 454 (1956)<sup>2</sup>.

In conclusion, the controlling provisions of the Stamford City Charter do not authorize, either expressly or by implication, the adoption of an ordinance by the Board of Representatives to impose mandatory local requirements for affordable housing, as such requirements lie solely within the province of the Stamford Zoning Board pursuant to the Charter. Any argument in support of the proposition that the Board of Representatives has the implied power to control or regulate affordable housing pursuant to its general powers to protect the public health, safety and welfare is misplaced as the sovereign power (i.e. the Stamford City Charter) has already defined the City of Stamford Zoning Board as the agency through which the land use regulation necessary to create, implement and control affordable housing requirements is to be handled.

Thank you for the opportunity to address this interesting issue. Should you have any questions concerning the foregoing opinion, please do not hesitate to contact me.

Very Truly Yours,  
Andrew J. McDonald  
Director of Legal Affairs

By   
John W. Mullin

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<sup>2</sup> The sole exception to this principle, under the Stamford City Charter, is the right held by opponents to and/or proponents of proposed amendments to the zoning map to have such proposed amendments referred to the Stamford Board of Representatives pursuant to §§ C6-40-5 and C6-40-6 of the Stamford City Charter.