

March 19, 2025

Re: House Bill 5801

Dear Committee Members

I am the President of the Cranston City Plan Commission, and I am writing to express my opposition to House Bill 5801. This legislation appears to be an attempt to prevent municipalities from denying an affordable housing comprehensive permit even if 10 percent of its housing or 15 percent of its rental units are affordable to low- and moderate-income households. The legislation interferes with local control over land use and zoning issues. It will act as disincentive to municipalities to maintain or strive to have 10 percent of its housing or 15 percent of its rental units be affordable. It will also lead to extensive and costly litigation.

At present, housing developers can submit an affordable housing comprehensive permit. Under this permit, a developer can ignore local zoning as to density and land use if at least 25 percent of the units in its proposed housing project is affordable to low- and moderate-income households. However, state law expressly states that a municipality can deny a comprehensive permit if the municipality has met: (1) the goal of 10 percent of all its housing being affordable, or (2) the goal of 15 percent of its rental units being affordable, and the municipality has at least 5,000 rental units, and 25 percent of all its housing are rental units. Communities such as Central Falls, Newport, Providence, and Woonsocket meet the 10 percent goal. Communities such as Cranston, East Providence, Warwick, West Warwick meet the 15 percent goal. (I am uncertain if North Providence or Pawtucket currently meet the 15 percent goal.) This legislation appears designed to undermine the ability of a municipality to deny an affordable housing comprehensive permit even if meets either the 10 percent goal or the 15 percent goal.

This legislation has three major problems. First, allowing a developer to override local zoning as to density and land use is an extreme remedy and should only be allowed in rare circumstances. Giving developers the unilateral ability to override the wishes of a community when that community already meets the 10 percent goal or 15 percent goal is particularly unjustified. These communities already have dense housing. Furthermore, local officials, not a developer, are in the best position to determine whether a proposed housing project is appropriate in a particular location. A large housing project could have a negative impact on the capacity of local schools, traffic, or neighboring properties.

Second, this legislation will eliminate any incentive for municipalities to maintain or strive to have 10 percent of its housing or 15 percent of its rental units be affordable. If a municipality cannot deny an affordable housing comprehensive permit based on meeting either the 10 percent or 15 percent goal, then a municipality will not have a reason to meet either goal. For example, currently, more than 15 percent of Cranston's rental units are affordable. In part, in order to maintain its ability to deny an affordable housing comprehensive permit, since May 2022, when feasible, the Cranston City Plan Commission has required new apartment projects to have at least 15 percent of their units to be affordable under state law. As a result, zone changes have been made and approvals have been granted to allow for about 600 more apartment units to be built, of which,

about 75 will be affordable. If this legislation passes, communities like Cranston will not have an incentive to ensure that 15 percent of its apartments or 10 percent of its housing are affordable.

Third, this legislation creates legal uncertainty. Even if the 10 percent goal or the 15 percent goal can no longer be the sole basis to deny an affordable housing comprehensive permit, communities may still decide to deny an affordable housing comprehensive permit on other grounds. It will lead to extensive litigation because developers will go to court to seek guidance as to what extent municipalities, which were previously protected from an affordable housing comprehensive permit, can now deny a permit. This litigation will cost both local taxpayers and developers, and will likely go on for years. This bill will not lead to a lot more housing. Instead, it will lead to a lot more litigation.

Housing costs have significantly increased since 2020. However, this dramatic increase was not triggered by local zoning. Local zoning has been in existence for about a century. A few years ago, local communities did not suddenly tighten their zoning requirements. The recent increase in housing costs was being driven by inflationary pressures such as supply chain issues related to the COVID pandemic and excessive government spending. In addition, the widespread adoption of new technologies which allow high-wage earners to work remotely and buy property in relatively less expensive markets also contributed to this dramatic increase housing costs.

Continuously passing legislation to override local control over zoning over the past few years has not materially reduced housing costs. Instead, as explained by land use scholar William Fischel, policies which override local control can “encourage a backlash against all development, ultimately making the whole region’s housing less affordable.” There is a need for more housing, but there is also a need to pay for the costs of this new housing. State officials should recognize the reality that building more housing usually has a negative fiscal impact on municipalities. Rather than passing more legislation to undermine local control, the state should financially incentivize municipalities to approve the building of more housing. This legislation creates disincentive for communities to work towards having more low- and moderate-income housing.

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Cranston City Plan Commission