

From: [Lemar, Anika Singh](#)
To: [CPC](#)
Subject: testimony: fair housing concerns regarding ADU's
Date: Tuesday, June 8, 2021 10:49:42 AM
Attachments: [ADU Fair Housing Concerns - CFHC-OCA-LSOCED Letter.pdf](#)

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I write in connection with the proposal to permit ADU's in certain residential districts in New Haven. The proposal includes an owner-occupancy requirement. Such a requirement, however, is unlawful on its face.

First, such requirements are *ultra vires* and in contravention of state law. New Haven can only exercise those zoning powers authorized by the state. Notably, nothing in Connecticut's zoning enabling act (Section 8-2 et seq of the Connecticut General Statutes) entitles towns to regulate whether a home (or the housing unit to which that home is attached) is rented or owned.

Second, such requirements violate the federal and state Fair Housing Acts. As a result of centuries of racism and segregation, there is a massive racial wealth gap as well as a homeownership gap in this country. Any policy that favors homeowners at the expense of renters imposes a disparate impact on people of color and other protected classes, the members of which are less likely to be homeowners. The attached letter, submitted to the Connecticut General Assembly in connection with the legislature's recent passage of ADU legislation, makes this argument on behalf of myself, the Connecticut Fair Housing Center, and the Open Communities Alliance. The final language of that bill – passed by the Connecticut General Assembly and awaiting signature by Governor Lamont – **does not** permit owner-occupancy requirements.

Subsection G of proposed Section 22 ought to be struck from the proposed ADU ordinance.

Best,

Anika Singh Lemar
552 Chapel Street
New Haven, CT 06511



May 18, 2021

Representative Cristin McCarthy Vahey
Connecticut State Legislature
Legislative Office Building, Room 4001
Hartford, CT 06106-1591

Dear Representative McCarthy Vahey:

We are writing to express deep concern about the owner occupancy requirement of HB 1024's Accessory Dwelling Unit provision. As you know, due to the history of discriminatory and segregating actions, many of which were embedded in government initiatives and are reinforced and continued through array of contemporary policies, in Connecticut Black and Latino families earn about half or less of white families and, nationally, have a fifth or less of the wealth. For this reason, it is statistically much less likely that Black and Latino families will have access to the resources necessary to become homeowners. Here in Connecticut, the resulting disparities are quite stark: while three out of every four white households own their own home, just a third of Latino households and less than half of Black households own their own homes.

As a result, the proposed owner occupancy mandate of HB 1024 imposes a disparate impact on Black and Hispanic communities in the State of Connecticut. Zoning practices may not violate the Fair Housing Act. No less an authority than the Supreme Court has described illegal exclusionary zoning as the "heartland of disparate impact liability" under the FHA. Many Mgmt., Inc. v. Cty. of Nassau, 819 F.3d 581, 619 (2d Cir. 2016) (quoting Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, 135 S.Ct. 2507, 2521-22 (2015)). Under federal law, where a plaintiff makes a prima facie case showing that a particular zoning practice imposes a disparate negative impact on a protected group, the defendant must show that the practice furthers a substantial, legitimate, and nondiscriminatory governmental

1 Rothstein, Richard. The Color of Law: A Forgotten History of How Our Government Segregated America. First edition. New York; London: Liveright Publishing Corporation, a division of W.W. Norton & Company, 2017 (outlining the history of government policies that contributed to segregation). Michael B. de Leeuw et al., Residential Segregation and Housing Discrimination in the United States: Violations of the International Convention on the Elimination of All Forms of Racial Discrimination, 2007 (discussing contemporary segregating government housing policies). Available at https://prrac.org/pdf/FinalCERDHousingDiscriminationReport.pdf State of Connecticut, 2015 Analysis of Impediment to Fair Housing Choice (addressing the racial/ethnic income gap in Connecticut). Available at https://portal.ct.gov/-/media/DOH/AnalysisofImpediments2015pdf.pdf?la=en. Federal Reserve, Survey of Consumer Finances 1989-2019 (addressing the wealth gap). Available at https://www.federalreserve.gov/econres/scf/dataviz/scf/chart/#series:Net_Worth;demographic:racecl4;population:all;units:median.

2 United States Census Bureau, 2018 American Community Survey 5 Year Estimates Subject Tables.

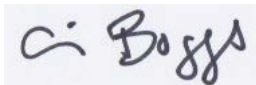
Table with 3 columns: Open Communities Alliance, The Jerome N. Frank Legal Services Organization, and Connecticut Fair Housing Center. Each column contains contact information including addresses, phone numbers, and websites.

interest. Here, there is no such governmental interest. Baseless assumptions about the superiority of homeowners and homeownership are discriminatory and empirically unsupported. Whether a home is occupied by a family that can afford a down payment bears no relation to the purposes of zoning.

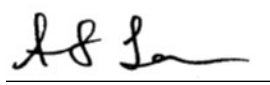
Furthermore, under the Fair Housing Act, the State of Connecticut, as a recipient of federal funds, has an obligation to affirmatively further fair housing. 42 U.S.C. 3608. It also has a Constitutional obligation to ensure none of its citizens are subject to segregation or discrimination based on race. Empowering municipalities to require owner occupancy of any dwellings, as S.B. 1024 proposes in the context of accessory dwelling units, not only fails to meet these obligations but actively undermines fair housing under the guise of an inclusionary zoning bill.

For all these reasons permitting disproportionately white municipalities to make housing categorically unavailable to renters will have a profound discriminatory effect based on race and national origin. Granting such authority to municipalities will invite discriminatory conduct, perpetuate segregation, and result in costly litigation. Accordingly, the "to require owner occupancy or" should be stricken at line 375.

Sincerely,



Erin Boggs
Executive Director
Open Communities Alliance



Anika Singh Lemar
Clinical Professor of Law
Yale Law School



Greg Kirschner
Legal Director
CT Fair Housing Center