



OFFICE OF THE TOWN ATTORNEY

TO: Ellen Zoppo-Sassu, Town Manager

FROM: Mark J. Cerrato, Assistant Town Attorney *mjc*

DATE: June 26, 2023

SUBJECT: Fair Rent Commission Ordinance
Town Code Sections 2-152 through 2-157, inclusive

The resolution to approve the proposed amendment to the Fair Rent Commission ordinance did not receive the required six affirmative votes at the Town Council's June 19, 2023 meeting.¹ On June 23, 2023 you requested a review of the existing Fair Rent Commission ordinance for compliance with the new statutory language.²

Conn. Gen. Stat. §7-148b was amended by Public Act 22-30, with an effective date of October 1, 2022. The amendments were addressed in my January 6, 2023 memorandum, a copy of which is attached. The primary change to the statute is that municipalities with more than 25,000 residents have an ordinance creating a fair rent commission. As noted in my January 6 memorandum (page 2), the revisions to the statute should have no direct impact on Enfield because the Town has had a Fair Rent Commission ordinance since the 1970s.

However, there are provisions of the existing ordinance that do not appear to be authorized by the statutory provisions.

1. Town Code section 2-152, subsection (a) *Generally*. The last sentence of subsection (a) states that “[t]he fair rent commission shall not investigate complaints submitted to the commission members but shall designate this power to complaint investigators.”
 - a. Conn. Gen. Stat. §7-148b(b) specifically provides that the “commission shall make studies and *investigations*, ...”. (*Emphasis added*).
 - b. The statute does not give the commission the authority to delegate its investigative authority. In Connecticut, it is well-settled that as a creation of the state, a municipality has no inherent powers of its own. *Blue Sky Bar v. Town of Stratford*, 203 Conn. 14, 19 (1987). And, further, “that a municipality possesses only such rights and powers that have been granted expressly to it by the state or that are necessary to discharge its duties and to carry out its objectives and purposes.” *Id.* See also *Buttermilk Farms, LLC v. PZC*, 292 Conn. 317, 326 (2009).

¹/ Town Charter, chapter III, section 4.

²/ Please note that the phrase “control and eliminate excessive rental charges” is in the existing ordinance (Town Code §2-152(a)) and in Conn. Gen. Stat. §7-148b(b).

- c. Accordingly, the duty to make investigations lies with the commission.³
2. Town Code section 2-153. Complaint Investigators, subsections (a) and (b).
 - a. As noted in comment 1.b., above, there is no statutory authority for delegation of the commission's investigative authority.⁴
 - b. As such, there would be no authority for the Town Manager to appoint complaint investigators.⁵
 - c. This section was deleted from the proposed amendment to the Fair Rent Commission ordinance.
 3. Town Code section 2-155 Complaint and hearing procedures, subsection (a).
 - a. The first and third sentences refer to the complaint investigators. As noted in comment 1.b., above, there is no statutory authority for delegation of the commission's investigative authority; and as noted in comment 2.b., above, there is no authority to appoint complaint investigators.
 - b. For administrative expediency, it is recommended that complaints to the commission be submitted to a town official, for example, the Town Manager or the Director of Social Services, rather than to a commission member. This would avoid any confusion or conflicts as to the commencement of the 45-day hearing period referenced in subsection (b) of section 2-155.
 - c. The proposed amendment to the ordinance, in the "Complaint and hearing process" section, addressed these issues.
 4. Town Code section 2-156 Holding rents in escrow.
 - a. This section should simply be "The fair rent commission may hold rents in escrow in accordance with the provisions of Conn. Gen. Stat. §7-148d."
 - b. The balance of the language in this section appears to give the building official a certain level of authority over the commission. There does not appear to be any statutory authority for this language. See *Blue Sky Bar v. Town of Stratford*, supra, and *Buttermilk Farms, LLC v. PZC*, supra.

Conclusion

The members of the Fair Rent Commission, upon their appointment, should be provided a copy of this memorandum. The members of the Commission should take note that any

^{3/} It is reasonable to presume that the commission would avail itself of any reports issued by applicable governmental agencies, including, but not necessarily limited to, the Building Office, the Fire District, and/or the Health Department.

^{4/} For several years, the Town's former Housing Code Inspector was the staff liaison to the Fair Rent Commission and, as set forth in his job description, acted as its complaint investigator.

^{5/} The Town Manager, under supervisory/managerial authority per the Town Charter, chapter IV, section 3, may direct *Town employees* to perform inspections and prepare reports with regard to issues within such employees' scope of authority.

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provisions of the Fair Rent Commission ordinance that are not authorized by or conflict with the applicable State statutes should not be enforced by the Commission. In addition, the current ordinance requires that a complaint be submitted to a Commission member. The members should be advised that upon receipt of a complaint they should immediately forward it to the Town Manager and/or the Director of Social Services (see comment 3.b., above).