

Chapter Four

Tools for Compliance with the Workforce Housing Law

A. Creating Reasonable and Realistic Opportunities

The overall challenge for municipal compliance with the workforce housing statute is to determine if local land use ordinances and regulations, viewed collectively, provide a reasonable and realistic opportunity for the development of workforce housing. A recommended first step in this process is to undertake an assessment of existing housing stock. The goal of this exercise is to determine whether new homes are being sold or rented at an affordable price. Demonstration of that could serve as an indication that the community's current land use ordinances and regulations are providing reasonable and realistic opportunities for the development of workforce housing. The following information should be gathered:

- Is new housing being built that meets workforce housing statute pricing guidelines (Figure 2-1)?;
- Are there rental units in the community that meet the workforce housing statute cost guidelines?; and
- What has been the price of recent existing homes sales in the community?

A recommended second step is to conduct a regulatory audit of existing ordinances and regulations in regard to:

- Where various types of housing may be permitted in the municipality;
- Which types of housing are currently permitted in each zoning district; and
- What regulatory hurdles, if any, may be in place that impact the ultimate cost of residential construction.

These steps will provide a community with information necessary to determine if reasonable and realistic opportunities currently exist.

B. Housing Assessment: Determining a Municipality's Supply

The purpose of a municipal housing assessment is to take a snapshot of a community's supply of workforce housing.

This can be a helpful analysis to undertake because, as outlined in the statute:

a municipality's existing housing stock shall be taken into consideration in determining its compliance with this section. If a municipality's existing housing stock is sufficient to accommodate its fair share of the current and reasonably foreseeable regional need for such housing, the municipality shall be deemed to be in compliance with this subdivision and RSA 672:1, III-e. - RSA 674:59, III.

While a housing assessment alone is not an analysis of whether a municipality meets its fair share of regional housing need, undertaking this level of analysis could, in concert with a regional analysis, lead to a conclusion that no further action is needed in response to the workforce housing law's requirements. In other words, if most of the housing stock is affordable based on current rents and market value of owned units (for sale or not) and land values and local regulations have changed little in the past few years, then it is likely that a municipality is already in compliance with the statute. This assumes that multi-family housing is allowed in the municipality. Conversely, in instances where the analysis reveals shortcomings in workforce housing inventory, the results of the analysis will provide baseline data which the community can rely on when considering amendments to its land use ordinances and regulations.

It is also important to differentiate between all housing in a community and those homes that have been developed recently. The sales prices or rental costs of homes and apartments that have been built in the past year or two can provide an indication of the existence of "reasonable and realistic opportunities" for workforce housing development. That is, if workforce housing is being built, then that provides a good indication of the existence of such opportunities. But if workforce housing is not being built, that does not mean the opportunities do not actually exist—it is possible that there are opportunities that are not being utilized by developers. The latter situation would require a more careful analysis to determine the existence of workforce housing development opportunities, or the lack of them because of regulatory constraints.

1. Getting Started: Some Key Questions

A significant portion of the data a municipality needs to conduct a housing assessment are readily available. The best place to start answering these questions would be the community's assessing office.

These are some key questions to ask when conducting a housing assessment.

- What is the range of recent (within the last year) owner occupied primary homes sales (not 2nd homes) in the community? Of these sales, how many have been new construction and what have been their sale price ranges?
- Are there multi-family properties? If so, are these units available on a rental basis and what are the corresponding rental rates?
- What percentages of owner occupied homes and rental units qualify as workforce housing based upon statutory criteria (As outlined in Figure 2-1)?

2. Gathering and Analyzing the Data

The assessor's office should have a list of all property sales that have occurred. If the assessing data are up to date (use equalized data), community assessments should generally reflect local market conditions.²⁶ From these data, obtain the following:

- Over the last year, identify the sales prices of primary preexisting homes, new homes, including condominiums.
 - The statute specifically excludes housing units that are age restricted, along with housing developments in which less than 50 percent of the housing units have less than two bedrooms. These homes should be omitted from the analysis.
 - Using the NHHFA Workforce Housing Purchase and Rent Limit (discussed in Chapter 2 and shown at Figure 2-1), determine what targeted home purchase price is applicable to the community.
 - Separate analyses of these data should be conducted for existing homes and newly constructed homes, as data corresponding to new home sales will provide an indication as to the effectiveness of current land use ordinances and regulations in providing opportunities to develop workforce housing – which is the goal of the statute. Existing home sales will provide data as to the overall affordability of owner occupied housing in the community and will be useful as part of a fair share analysis, if the community chooses to undertake one.
 - Collect data on the number of rental units in the community and estimate their rental cost. Some rental developments are assessed based on their income stream and thus the local assessor may have rental cost information available for them. For the balance however, a rental survey may be required.

²⁶ Equalized data is a process used by an assessing department to recognize the rise and fall of property values over time. An assessing department attempts to maintain property assessments as close to 100% true market value at all time. When the difference between market and assessed values become significant, a revaluation of all of a municipality's properties must take place. Equalization attempts to recognize a property's true market value as an intermediate step between revaluations.

- New Hampshire Housing Finance Authority (NHHFA) annually collects rental data for the entire state, and posts this information along with data for larger communities on its website http://www.nhhfa.org/rl_rrcs.cfm).
 - If your community is not listed, call NHHFA (472-8623) to determine if they have collected data on your community but have not published it. For smaller communities, these data may not be available, or the sample size may be too small to be statistically reliable.
- The NHHFA rental data will be reported in gross rents (which includes utility costs), which is the current value used to determine rental affordability under the workforce housing statute. If a local survey is undertaken, average utility costs will have to be included in the rental cost.²⁷
- As with owner-occupied housing, determine what percentage of the rental housing stock meets workforce housing target costs.

3. Drawing Conclusions from the Data

The information collected might help the community determine if it is meeting its “fair share” of the current and future regional need for workforce housing if that “fair share” has been determined. But more importantly, it should help determine if there is adequate availability and opportunity to construct housing that can meet the targeted price and rental figures. If developments are being approved yielding new homes that are affordable workforce housing under the definitions of the statute, then the municipality’s land use ordinances and regulations may be in compliance with the statute.

As for fair share, it may best be regarded as a principle, not a quota, and providing opportunity for workforce housing development is the key to meeting the requirements of the workforce housing statute. If a community claims that its existing housing stock is adequate to meet its fair share of the region’s current and future need for workforce housing, it must be prepared to defend that position if it is challenged in court. Both the regional housing need and the municipality’s fair share of that need would have to be determined (see Chapter 2, II.C.).

C. Municipal Regulatory Audit: Reviewing Development Regulations

Based on the housing assessment, a picture of a community’s housing stock should begin to emerge. If a determination is made that the community does not provide an opportunity for the development of workforce housing, then the municipality should undertake an audit of its zoning ordinance and land use regulations to determine how they

²⁷ NHHFA annually publishes rental utility allowances , available here: http://www.nhhfa.org/rl_hud.cfm.

can be altered to allow a reasonable and realistic opportunity. The following steps should be considered when performing an audit of land use ordinances and regulations:

- Initiate a dialogue with the local development community to help identify the local land use ordinances and regulations that frustrate or impede developers' ability to build workforce housing. An open meeting to obtain feedback can be very effective. Builders, land surveyors/engineers and land use attorneys may provide useful information as the municipality addresses this question.

Initiate A Dialogue With Local Developers

In Jackson, contractors and real estate agents have often served as Planning Board members or alternates. The Town actively seeks participation of local business owners as Planning Board members. One current member owns both a local restaurant and a residential and commercial construction business. With that member's awareness of local building concerns, he frequently provides helpful comments on Planning Board matters from road standards to International Building Code issues to general site development concerns.

As the Board began discussion of Workforce Housing issues and possible incentives, that Board member helpfully indicated which incentives might be most meaningful for a developer and which needn't be considered - whether as unnecessary, or as potentially detrimental to the Town (for example, lessening road standards).

Another local resident and developer, who has successfully created housing units that might have qualified as Workforce Housing with relatively minor changes, has also provided guidance on cost-saving development measures she employed, including clustering of the units, and a short driveway, and using green energy measures which lower utility costs and enable higher rental payments.

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- Review local land use ordinances and regulations to ensure that the most basic requirements of the statute are met, particularly –
 - Are there opportunities for the construction of multi-family housing and specifically for the construction of buildings containing five or more dwelling units?
 - Does more than 50 percent of the area in which residential uses are permitted provide for reasonable and realistic opportunities for the development of workforce housing?

Identify those regulations that have an impact on the cost of development, and examine their purpose and their scientific foundation or cultural basis. Specific land use ordinances and regulations including those design standards contained within a municipal subdivision and site plan review regulation may need to be amended in order to provide the opportunity for the development of economically viable workforce housing.

Meeting the Workforce Housing Challenge

The following are adapted from some recommendations made by planning consultant Bruce Mayberry in the Strafford Regional Planning Commission's *2009 Regional Housing Needs Assessment*²⁸, part of which outlines local regulatory practices or standards that can inhibit the development of workforce housing:

- **Definitions that Contain Regulatory Standards.** Zoning ordinance definitions sometimes contain “hidden” regulatory language, such as circles or rectangles of certain dimensions that must be accommodated within a lot’s “buildable area,” which can have the effect of substantially increasing the area needed for a single building lot. As a general rule, ordinance definitions should be limited to a description of what a particular term means, without incorporating standards or regulations within the definition. Any regulatory requirements that pertain to development should be contained in the applicable development standards of the ordinance so that the purpose of the regulation is clear.
- **Land availability by Zoning District.** Municipal zoning ordinances sometimes contain provisions that permit various forms of multi-family housing, but only in districts that are virtually built out, or which contain very little developable land. This may create the impression that multi-family housing is permitted when in fact there are no reasonable opportunities for its development. There should be an adequate supply of developable land within the districts in which multi-family housing is permitted so that a realistic potential exists for its development.
- **Maximum Structures Per Lot.** In many communities, standard zoning language often contains a general limitation of only one principal structure per lot. This can force a development of multiple buildings to be spread out across many individual lots, each with its own curb cut and road frontage even if a single lot could support multiple structures. Further, if each lot must be secured by a separate mortgage, the financing of affordable development may be made more difficult. In the case of multi-family units, or forms of condominium development, these provisions may force unnecessary inefficiencies onto an otherwise environmentally supportable development. The combination of low numbers of units per structure and the limit of one structure per lot will compound the difficulty of creating affordable multi-family housing.
- **“Inclusionary” Housing Limitations and Conflicts with Production Programs.** Many communities have incorporated voluntary inclusionary housing provisions with incentives to enable workforce housing developments. However, there are some instances where the provisions actually place upper limits on the number of affordable housing units that can be contained within a particular development. In cases where all the units in such a development might meet the income limits established under RSA

²⁸ Available at <http://strafford.org/uploads/SRPCHousingAssessment2009Dec29.pdf>. Document produced by BCM Planning, LLC.

674:58, an otherwise affordable housing development could be discouraged by a cap on the number or percent of affordable units it can contain.

In addition, placing upper limits on the number of percent of units that may be affordable within an inclusionary development may conflict with requirements of programs that financially support affordable rental housing development. For example, because of the rental income structure, available financing, and area incomes, a project financed in part with development equity from the sale of Federal income tax credits might have to be 100% affordable to be economically viable. But if a local ordinance arbitrarily caps the percentage of units that may be affordable, it could directly affect the economic viability of an otherwise achievable rental workforce housing development.

Furthermore, it is not clear how a municipality could compel a developer to make a certain portion of a development “unaffordable” – that is, to require a certain number or percentage of the units to sell or rent at higher prices than the workforce housing units that comprise the balance of the development.

- **Higher Performance Standards for Affordable Housing.** When regulations require higher performance standards for affordable housing development than other new housing, the public purpose rationale may be suspect. If the frontage, setbacks, buffers, design review or other requirements for affordable or workforce developments greatly exceed the standards applied to similar structure types in other developments, a higher development cost may be incurred per unit. When creating inclusionary incentive provisions for workforce housing development, the community should be careful not to negate these advantages with other requirements that go beyond health and safety concerns.

Regulatory Strategies for Workforce Housing Opportunities

- Remove or reduce building permit limitations (growth management ordinances) and phasing requirements. The delays imposed by such restrictions can substantially add to of a development.
- Adopt regulations allowing homes to be built on back lots with reduced road frontage requirements.
- Reduce minimum frontage requirements. With roads costing anywhere from \$200 - \$600 a foot, this can result in significant cost savings.
- Eliminate or reduce restrictive densities. Allow lot sizes to be dictated by soil suitability for on site subsurface sewage disposal.
- Reduce road width requirements. In most residential developments, 20 to 22 feet of pavement width is adequate for low volume residential street access.

- Address construction standards pertaining to storm water drainage and utilities. Using open drainage can significantly reduce cost when compared to curb and closed drainage conditions.
 - Reduce minimum yard and setback requirements, including setbacks from wetlands.
 - Eliminate or reduce restrictions on the construction of a variety of housing types, including duplex, triplex, townhome, and garden style building options.
 - Waive or reduce impact fees for qualifying projects.
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D. Amendments and Tools for Compliance

Implementing some of the strategies noted above will assist communities in reducing development costs and hence assist in adhering to the reasonable and realistic opportunity test contained in the workforce statute. Some suggestions for how to implement these changes are contained in this section.

To implement some of these options, a valuable resource to consider would be to review New Hampshire Housing's recently updated *Housing Solutions for New Hampshire* handbook, originally published in 2004.²⁹ This document contains numerous successful examples that communities can use to expand their workforce housing inventory and development opportunities.

Other resources include the websites of the NH Workforce Housing Council and the Workforce Housing Coalition of The Greater Seacoast, which contain a number of resources and successful workforce housing examples.³⁰ The State's Regional Planning Commissions recently completed a comprehensive handbook for local land use regulations, *Innovative Land Use (ILU) Planning Techniques*, in cooperation with the NH Department of Environmental Services. Several of the chapters in the *ILU* handbook contain provisions that will be helpful to communities as they address the requirements of the workforce housing statute, including those dealing with inclusionary zoning and density transfer credits.³¹

1. Rental Multi-Family Housing

The requirement that communities allow for the construction of rental multi-family housing is a relatively simple requirement to meet. Furthermore, development of multi-family housing can be achieved in a manner that is consistent with the character and

²⁹ "Housing Solutions for New Hampshire." Pub. by New Hampshire Housing Finance Authority, 2010. Available at http://www.nhhfa.org/rl_housinghandbook.cfm.

³⁰ New Hampshire Workforce Housing Council: <http://www.workforcehousingnh.com>; and the Workforce Housing Coalition of the Greater Seacoast: http://www.seacoastwhc.org/planner_info.htm.

³¹ The ILU handbook is available at http://des.nh.gov/organization/divisions/water/wmb/repp/innovative_land_use.htm.

aesthetics of any community. Multi-family housing is also the best and most efficient means of providing homes that are affordable to the State's working families.

The workforce housing statute requires every municipality to allow multi-family housing, structures of five or more units per building, in some part of their residentially-zoned area. The statute does not require that this use be allowed in a majority of the land area zoned for residential uses, but it does specifically state that rental multi-family housing must be allowed. As noted in chapter 2, the requirement that ordinances allow structures with at least five units does not mean that a municipality must change its definition of "multi-family," unless such structures are specifically prohibited by the community's regulations. At the same time, restricting multi-family rental projects to only 5 units may render the proposed projects economically infeasible.

For communities with access to public water and/or sewer systems, it will be easier to comply with the statute than those without. This sort of infrastructure allows for developments of substantially higher densities. But even without public sewer and water systems, communities should be able to identify areas that are suitable for smaller multi-family developments.

Identifying multi-family housing opportunities with a size and scale appropriate for the community setting is a very achievable task. A few viable options include:

- **Adaptive Reuse.** Allow for the conversion of old factories and commercial buildings into a variety of smaller living units. In downtown areas, permitting apartments – either in a completely residential building or above a first floor non-residential use – is an efficient use of land and is the kind of regulatory flexibility that will encourage development.

It may also be appropriate to allow to allow large, older homes to be converted to multi-family dwellings. For example, the Town of Hollis allows up to four units in older homes, provided that the existing footprint is not expanded (note, however, that this zoning standard alone would not fully meet the statute's requirement that zoning must allow multi-family rental structures of at least five units).

- **Multi-family District.** In appropriate locations, create a multi-family zoning district with a density and sufficient land area to ensure its economic viability. This may be accomplished by requiring only a portion of the units in a building to be set aside for workforce housing with the remaining percentage being left to the developer to decide how to target. This creates greater access to financing for a developer by increasing the profit margin. But if a developer is able to build a development that is exclusively workforce housing, allow that too.
- **Mixed Use Developments or Zones.** Permit the development of mixed use non-residential / residential projects. Multiple land uses can successfully co-mingle and assist in creating a financially successful development project as well as vibrant communities. Allowing residential uses above or adjacent to

commercial space not only uses land more efficiently, but also can help create a more “walkable” built environment, a stronger local economy, and a more cohesive and secure neighborhood. This can be accomplished in a manner that matches and augments the traditional layout of our historic village centers, and can be done with both ownership and rental housing opportunities.

- **Accessory Apartments.** Although accessory apartments are not multi-family housing as defined by the statute, allowing additional dwelling units within existing structures or in detached structures on the same lot can create important affordable housing opportunities in any community.

In order to increase the housing supply available to the general public, do not restrict these units to relatives of the owner of the property’s principal dwelling. Such restrictions, in addition to significantly limiting the market for the units, are also very difficult to enforce.

2. Owner-Occupied Housing

A host of options are available to communities to allow for the construction of owner-occupied workforce housing units. For example, the Town of Amherst has been a leader in this arena, permitting dozens of workforce housing units over the last two decades. Some successful examples of owner occupied housing include the following.

- **Condominiums.** Even in rural areas, use of flexible development standards that facilitate condominium development of single-family or multi-unit townhouse buildings can create the opportunity for owner-occupied workforce housing.

These projects can be successfully built using on site water and septic systems; and with proper flexibility, they can be constructed on many types of sites.

This development option can be created so that all of the units are workforce housing or with a requirement that a minimum percentage of units be set aside for workforce housing.

- **Inclusionary Zoning.** A common tool used to encourage the construction of workforce housing is inclusionary zoning. Under this strategy, a density bonus is provided if a minimum percentage of the proposed residential density is set aside for workforce housing. Typically, a majority of the units are sold at market rate, while the workforce housing units are sold at a maximum price based on statutory standards, but some ordinances may offer a substantially greater bonus in exchange for all of the units being held as affordable.

The affordability of these units may be preserved by recorded deed restrictions or they may be held in some type of housing trust that administers

their sale. This may require some form of oversight by the municipality. The section on continuing compliance below addresses some methods by which communities can address this need.

In 2008, NHHFA sponsored an innovative funding program, the Inclusionary Zoning Implementation Program (IZIP), which provided competitive non-matching grants to communities to hire pre-qualified consultants to assist in the creation and adoption of inclusionary zoning ordinances. IZIP has led to the adoption of a dozen different inclusionary zoning ordinances in places such as Wolfeboro, Brookline, Atkinson, Bedford, East Kingston, Rindge, Hampton Falls, and Salem. Work in other communities continues.

An IZIP Success Story

In 2008, Bedford was one of ten communities awarded an IZIP grant, and the town hired a consultant to assist in the preparation of zoning changes. At roughly the same time, however, the new Workforce Housing statute was enacted. Bedford used its IZIP grant to create an inclusionary zoning ordinance, but also fashioned zoning changes to meet the statute's broader goals, including specifically addressing the need for multi-family rental housing.

Over a period of six months, the planning board's workforce housing committee – which included for-profit and non-profit developers, engineers, and board members – worked with the consultant to produce an ordinance that was specifically tailored to Bedford's economic environment and development patterns. The committee determined that the best place for multi-family housing was in the town's northeast quadrant, where infrastructure would support higher densities. In addition, the ordinance provides an incentive of 1/3 density bonus throughout the town's large Residential & Agricultural zone for workforce housing, which could include structures with up to 4 dwelling units. The planning board was careful to require long-term affordability as part of its approach, and the ordinance calls for a 30-year renewable affordability restriction on all workforce housing units.

Beyond the background work that went into developing the proposal, the Bedford planning board and its workforce housing committee held several public information meetings as a means of educating people about the proposed zoning amendment and addressing voters' concerns and perceptions. As a result of this comprehensive effort, the voters of Bedford approved the measure by an overwhelming margin, with 84% voting in favor.

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- **Duplex Units:** Permit the construction of duplex units which can frequently appear indistinguishable from adjoining single-family dwellings in the same neighborhood. In developments where homes are larger, the same principle can apply to multi-family structures. Allowing duplexes or multi-family construction permits a developer to reduce the per-unit cost of housing.

The Town of Amherst has been a leader in this arena for a number of years, having adopted a flexible inclusionary zoning ordinance in the 1980s, through which the planning board has permitted dozens of units, including many duplexes.

A Local Example of Regulatory Change

In order to address the workforce housing statute, the Town of Hollis successfully advanced several zoning amendments that were approved by voters in March 2009. Hollis is a rural, affluent residential and farming community located immediately west of Nashua. A strong pride exists in preserving its rural character, including many of its working farms, apple orchards and horse pastures. Highlights of these amendments include:

- ◆ Previously, older homes were allowed to have up to four units located within an existing home's footprint. This provision was amended to enable three of these units be market rate and while the fourth unit must meet workforce housing rental criteria.
- ◆ The ability to construct apartments above commercial space in the downtown area was expanded from 50 percent to 100 percent of the area of the first floor.
- ◆ For subdivisions containing six or more lots, a 30 percent density bonus for workforce housing units may be permitted by conditional use permit. Additional flexibility was provided including: soil based lot sizing following NHDES standards, provisions for backlots, permitting wells and septic systems to be placed in the open space areas, and an exemption from phasing requirements.
- ◆ A multi-family overlay zone was created allowing up to four units per acre. For rental projects, at least 25 percent of the dwelling units shall be designated as workforce housing units. For owner occupied units, 30 percent of the dwelling units must be available for workforce housing. Garden-style apartment buildings are limited to two stories.

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- **Form-Based Codes.** As an alternative to traditional zoning, form-based zoning focuses on the design of development – including architectural attributes – and the relationship of the development to the land and to an overall plan, rather than concentrating on the separation of one land use from another. This approach to mixed-use development is currently being used in Dover and Stratham, as part of their downtown and gateway commercial districts, respectively.

Form-based codes provide an innovative way of encouraging good development that helps to reduce reliance on automobiles by creating a

“walkable” built environment in which people’s most common activities – home, work, school, shopping – are all within an easy walking distance. But form-based codes will usually only induce the creation of affordable housing through the use of incentives, such as with inclusionary zoning (above).

- **Open Space or Conservation Subdivision Design.** For decades, New Hampshire communities used a standard approach to subdivision regulations and supporting zoning standards: large lots, with a single house on each lot. Local planning boards began to realize that these standards, which they hoped would “preserve rural character,” were actually having the opposite effect. To help reduce the impacts of subdivisions many municipalities have adopted standards that permit reduced lot sizes and concentration of development in a portion of a land parcel, while maintaining the balance of the land as open space.

Although open space design has commonly been cited as a means of reducing development costs and increasing affordability of housing, in reality the savings often are not enough for it to yield homes that would sell at workforce housing prices.³² This means that, as with form-based codes, open space design standards need to contain other standards that will induce affordable housing development. This can be achieved through inclusionary zoning or other techniques, such as accessory dwelling units.

Although multi-family housing may be created for sale (typically as condominiums), owner-occupied multi-family workforce housing does not substitute for the statute’s requirement that local land use regulations also must provide opportunities for rental multi-family workforce housing.

E. Continued Compliance - Meeting Statutory Requirements Over Time

Even as communities presently work toward meeting the requirements of the workforce housing statute, they must also recognize an ongoing commitment to do so in the future. Communities should evaluate all future proposals to amend land use ordinances and regulations for the impact that such amendments might have on the opportunities to develop workforce housing. They should also review local housing market data on a regular basis (annually, or once every few years, depending on the pace and variability of the market) to understand trends in housing costs and to ensure that their land use ordinances and regulations continue to provide such opportunities.

In short, once a municipality provides a reasonable and realistic opportunity for workforce housing development, it should be careful not to let that achievement slip

³² Recognition of this led the New Hampshire Legislature to delete a reference to “cluster development” in RSA 672:1, III-e, which describes the overall municipal obligation to provide opportunities for the development of affordable housing in local land use regulations. This change was made in 2008 as part of the workforce housing statute.

away as a result of future adoption of regulations that have a contrary impact. During periods of faster housing price increases, opportunities for development of workforce housing that previously existed may disappear. In addition, as a community's housing stock grows, the percentage of dwelling units that qualify as workforce housing may diminish, so the community should seek to ensure that a portion of its new housing stock is affordable workforce housing.

By reviewing local housing market data on a yearly basis, trends can be reviewed and, if necessary, addressed to ensure that the municipality continues to meet the workforce housing statute's requirements.

A dependable and secure stock of workforce housing units should be maintained so that efforts made by the community to create these units are not lost. While amending their land use ordinances and regulations, municipalities may wish to ensure that any workforce housing created remains affordable to those whom it is intended to benefit.

A recent amendment to the workforce housing law specifically enables local boards to adopt standards in their regulations that require long-term affordability covenants as conditions of approval, including duration of affordability, terms for qualifying purchasers and renters on the basis of income, and methods of enforcement. Boards may also rely on the existence of recorded covenants administered by a state or federal entity.³³

There are many methods by which to ensure long-term affordability, including the following.

- **Subsidy Lien:** New Hampshire Housing has created a model zoning ordinance and deed restriction and lien that preserves the affordability of ownership dwelling units over time and maintains the public benefit conferred through the use of inclusionary zoning bonus provisions, while also allowing the property owner to realize gains in equity based on market gains or property improvements. The municipality contracts with a private property management company, a local non-profit or even New Hampshire Housing to manage all sales and resales of units. The seller is charged a fee for this service, paid at the time of closing resulting in no administrative burden to the municipality. (see Appendix B for more information).
- **Resale Cap:** Together with its inclusionary zoning ordinance, the Town of Exeter has used a covenant restriction for the sales of workforce housing (see Appendix C). The Exeter model includes a provision by which the home price appreciation is tied to the Consumer Price Index, limiting the home price growth to a manageable rate over time. The Town contracts with a private property management company to manage all sales and resales of units. The seller is charged a fee for this service, paid at the time of closing and resulting in no administrative burden to the Town. The restriction has a 30-year term that renews if the property is sold prior to its expiration.

³³ Chapter 150, Laws of 2010.

- **Size Limitations:** As part of its overall inclusionary zoning ordinance, the Town of Amherst imposes a limitation on the size of housing units that are built under the ordinance's provisions. The units are restricted to 1,300 s.f. of heated living space for a period of ten years. For housing that is built under the limitations of condominium ownership, this size limit is practically perpetual.
- **Community Land Trust (CLT):** CLTs have been established across the country and in New Hampshire as a means of fostering development and long-term perpetuation of affordable housing. A CLT is a non-profit organization that owns the underlying land, either in an overall development or in separately acquired and noncontiguous parcels, and enters into a minimal cost land-lease with the purchaser of the home. Because the value of the land is removed from the cost of the sale, the home is more significantly affordable. In return, the owner agrees either to a limit on the resale price and to sharing equity gains with the CLT.³⁴
- **Rental Cost Restrictions:** In addition to the variety of ownership restrictions, municipalities may also impose limitations on rents charged in workforce housing developments. This may be done in a manner that accounts for inflation and increased cost of operations. Municipalities should be careful to adopt flexible language that would generally include third-party financing and enforcement of long-term rental affordability, thereby eliminating any need for the municipality to be involved in monitoring or enforcement. For example, the Low-Income Housing Tax Credit program administered and enforced by New Hampshire Housing provides the affordability of rental units lasting 99 years.³⁵

³⁴ Information on community land trusts is available online here: <http://www.clnetwork.org>.

³⁵ Information on the Low-Income Housing Tax Credit program is available online here: http://www.nhhfa.org/bp_lihtc.cfm.