

# ∞ PROGRESS IN WORKFORCE HOUSING ∞

## A REPORT ON IMPLEMENTATION OF THE NEW HAMPSHIRE WORKFORCE HOUSING LAW

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Prepared by the New Hampshire Housing Finance Authority

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### Introduction

Two years ago, the New Hampshire Legislature passed a landmark law that requires every city and town to allow reasonable and realistic opportunities for the development of workforce housing. While the state's Supreme Court had said similar things in its 1991 decision in *Britton v. Town of Chester*, few municipalities in the ensuing years had responded with appropriate land use regulations. Indeed, many had adopted zoning and other land use regulations that were increasingly exclusionary, making it impossible to develop affordable housing.

Over the past decade, the Legislature created a series of study committees and commissions (HB 1199 (2000), SB 21 (2001), SB 190 (2006)), each of which concluded that there was a critical shortage of affordable housing in the state, and that the Legislature must act to compel municipalities to adopt appropriate land use regulations to allow for housing development. These conclusions were bolstered by studies commissioned by New Hampshire Housing and others that demonstrated the serious negative impact that a constrained housing supply was having upon the state's economy. This impact was reflected also in the views of the state's business community, which increasingly recognized that high housing costs were impacting their ability to hire and retain a skilled labor force. As a result of this, affordable housing legislation was the NH Business and Industry Association's top legislative priority for three years, until the Legislature responded in 2008.

### 2008 Workforce Housing Law

The New Hampshire Workforce Housing law (RSA 674:58-61; Chapter 299, Laws of 2008 (SB 342)) became effective on January 1, 2010. It requires all municipalities to provide "reasonable and realistic opportunities" for the development of homes that are affordable to low and moderate income families. The law is intended to address a statewide shortage of affordable housing, recognized by the Legislature as posing a threat to the state's economic growth,

presenting a barrier to the expansion of the state’s labor force, and undermining state efforts to foster a productive and self-reliant workforce.

The new law defines “workforce housing” as homes that are affordable at a 30% cost burden to ownership households of four people making up to 100% of the area median income, or renter households of three making up to 60% of the area median income. The workforce housing law requires all municipalities to consider the economic costs of their land use regulations and to ensure that these regulations provide the opportunity for economically viable workforce housing development in a majority of their residentially-zoned area. The law also requires cities and towns to make provisions for multi-family residential development, and it gives developers the option of an accelerated appeal in superior court.

It is also important to recognize what the Workforce Housing law *does not* do. The law does not require that a certain percentage of housing must be affordable in any community. It does not allow developers to circumvent the local approval process, as is the case in some other states. It does not shift the burden of proof in the approval process—developers still must demonstrate that they are meeting local land use requirements.

The Workforce Housing law supports reasonable local standards related to environmental protection, fire and life safety protection, traffic safety, and standards pertaining to water supply and sanitary disposal. It also identifies “inclusionary zoning” as a means of meeting the standards of the law. Under separate state law, inclusionary zoning is defined as a regulatory inducement that municipalities may provide to encourage developers to voluntarily build affordable housing.

### **Local Responses to the Workforce Housing Law**

Municipal responses to the workforce housing law have been very promising. Despite initial resistance based largely on misunderstanding of the law’s requirements, starting with town meetings in 2009 and continuing into this year, several dozen communities have adopted zoning provisions aimed at providing opportunities for the development of workforce housing.

Because of the Workforce Housing statute’s inherent flexibility, communities are developing different strategies to meet its requirements, given their own unique circumstances—such as the nature of the local real estate market, existing patterns of development, and peculiarities of the local land use regulations. But the approaches that are being taken can be roughly categorized.

- **Multi-family Housing:** the Workforce Housing law requires that multi-family housing of at least five units per structure be allowed in some location in each community. As a result, some municipalities have chosen to change their definitions, because they had historically not allowed multi-family housing at all or limited it to three- or four-unit structures. Some are establishing a maximum number of units in structures (such as five or eight). Generally, the standards that are being imposed seem consistent with patterns of development that would be expected in such communities. For example, very large structures would seem “out of character” in more rural communities, whereas larger towns could more comfortably accommodate such structures, both from an aesthetic standpoint and also meeting public safety concerns, particularly local fire protection capacity.
- **Inclusionary Zoning:** Several communities have adopted density bonuses or other similar incentives for developers who are willing to allocate a particular percentage of a development toward workforce housing. At the same time, these communities also require the recording of covenants to ensure the long-term affordability of workforce housing.
- **Accessory Dwelling Units:** Many communities, particularly smaller and more rural towns, are adopting standards for accessory apartments or modifying existing standards to make them easier to use. Accessory apartments not only provide an important supply of affordable housing, but they also make homes more affordable to their owner-occupants by providing a regular supply of income. Additionally, as homeowners age they may find that they prefer living in the accessory apartment and renting out the larger portion of the home as their living needs change.
- **Regulatory Flexibility:** In addition to inclusionary zoning, some communities have enacted flexible development standards that allow a workforce housing developer to identify the local regulatory provisions that unnecessarily add costs to a development, and that grant the local planning board the authority to waive those provisions in appropriate circumstances. Once adopted by a community, this flexibility may be exercised through existing statutory provisions for “conditional use permits” granted by planning boards.

Some communities, particularly smaller ones, have found that they have only needed to make minor changes to their regulations, such as altering their road construction standards to allow for more economical construction, and that they did not need to amend their zoning ordinances. Others have evaluated their ordinances and regulations and concluded that they are already providing reasonable

regulatory opportunities for the development of economically viable workforce housing.

Builders and developers are also beginning to understand the implications of the Workforce Housing law, and to evaluate its advantages and drawbacks. While the law does provide developers with certain tools, such as an accelerated appeals process, it also can impose significant requirements. These include increased financial scrutiny by local land use boards and restrictions requiring long-term affordability. The law does not allow developers to circumvent the local planning process. As a result of these requirements, some developers choose not to use the law's provisions. But others are finding that their proposals for high-quality affordable housing are being approved in communities that would have previously rejected them. Progress is being made.

To date at least forty-five communities have made regulatory changes as a result of the Workforce Housing law. The list below is based on anecdotal reports and newspaper accounts. It is not an assessment of the *quality* of the municipalities' efforts at meeting the law's requirements, only that these communities have made some zoning and other regulatory changes in response to the law.

<b>2009</b>	<b>2010</b>	
1. Alton	1. Barrington	15. Mason
2. Amherst	2. Bennington	16. New Durham
3. Atkinson	3. Brentwood	17. Nottingham
4. Auburn	4. Canterbury	18. Plainfield
5. Bedford	5. Chichester	19. Rye
6. Brookfield	6. Dublin	20. Salem
7. Brookline	7. Effingham	21. Sandown
8. East Kingston	8. Epping	22. Sandwich
9. Fitzwilliam	9. Hooksett	23. Sharon
10. Freedom	10. Jackson	24. Stratham
11. Goffstown	11. Kensington	25. Sunapee
12. Hampton Falls	12. Londonderry	26. Tuftonboro
13. Hollis	13. Loudon	27. Warner
14. New London	14. Madison	

In addition to these necessary regulatory changes, developers are finding that they are able to gain approvals for workforce housing developments in communities that have not traditionally been the homes for this sort of development. This is true of places such as Hooksett, Goffstown, Bow, Wolfeboro, Tilton, and

Meredith, where local boards have recently approved proposals for affordable and workforce housing.

### **The Role of the New Hampshire Housing Finance Authority**

Working with the law has been difficult for many local planning boards, partly because it requires thoughtful analysis of the economics of land development and the regulatory fiscal impact of land use regulations. In response to requests for assistance, New Hampshire Housing has devoted substantial staff resources to help in this effort. In addition to many presentations at statewide planning and municipal conferences, New Hampshire Housing staff has also conducted approximately seventy-five meetings with local boards to help municipalities understand the law and address its requirements, and staff also provides recommendations on zoning proposals upon request by planning boards.

Earlier in 2010, New Hampshire Housing produced a guidebook for local land use boards – *“Meeting the Workforce Housing Challenge”* – that provides recommendations for analyzing a municipality’s land use ordinances and regulations and outlines approaches to understanding issues of economic viability. Continuing in this work in the fall of 2010, New Hampshire Housing is conducting a series of workshops on issues related to the workforce housing law. These are aimed at different audiences, including professional planners, developers and builders, real estate and finance professionals, and others.

In 2007, New Hampshire Housing created a grant program for municipalities to hire consultants to assist in the preparation and adoption of inclusionary zoning. This program was partly funded by the NH Charitable Foundation, the NH Community Development Finance Authority, and the NH Department of Transportation’s Community Technical Assistance Program. The objectives of this program were to create a base of knowledge about inclusionary zoning among the state’s professional planners and to develop a variety of models that other communities could consult as they considered creating their own ordinances. This effort was highly successful, and yielded a variety of inclusionary zoning approaches that are now being mirrored in other communities across the state as they work to meet the requirements of the Workforce Housing law.

New Hampshire Housing staff also works with the group of non-profit regional workforce housing coalitions that have been established over the past decade. These are grass-roots organizations that support the development of high-quality workforce housing throughout the state, with a focus on involving the local business community and educating local land use boards. The regional coalitions and New Hampshire Housing are working together to promote the establishment

of local housing commissions, enabled under recent state law to serve as a local voice for housing concerns.

All of this continues New Hampshire Housing's decade-long effort at providing information to local, regional, and state decision-makers on the condition of the New Hampshire's housing market and the factors that influence it. Now, local housing advocates and town planners are credibly voicing concerns over their communities' regulatory barriers to the development of housing that is affordable to New Hampshire's working families.

### **Conclusions**

Some believe that the current economic downturn has solved the problem of housing affordability in New Hampshire. While it is true that the cost of housing has decreased, making home ownership more affordable than it was before, this change has only returned our statewide market to the position where it was a decade ago—the time when many people were expressing concerns about housing affordability. This is compounded by an ongoing shortage of rental housing throughout the state, and rental costs have not declined at all.

The New Hampshire economy is poised for growth. Now is the time for communities to take action to promote a sustainable housing market that fully meets the needs of the state's working families.

It is clear that many communities statewide have made legitimate and earnest efforts to meet the requirements of the Workforce Housing law. The steps taken by these several dozen communities mark an important change in New Hampshire, and many municipalities are finding that compliance with the statute is easier than they initially believed. For some communities, the only necessary changes may be to address multi-family housing and perhaps accessory dwelling units. Others might find that they can change their road construction and other development standards to reduce development costs. And still others might find that the opportunity to develop workforce housing already exists.

Even with these positive changes, much work remains to be done as many other communities face the need to make significant zoning changes to clear a regulatory path for workforce housing. Meeting this continuing challenge will require an ongoing commitment from public officials at state, regional, and local levels, working in concert with housing development professionals and housing advocates.