



TOWN OF DURHAM
8 NEWMARKET ROAD
DURHAM, NH 03824
Tel: 603-868-5571
Fax: 603-868-1858
www.ci.durham.nh.us

RESOLUTION #2024-06 OF DURHAM, NEW HAMPSHIRE

A RESOLUTION OPPOSING HOUSE BILL 1281 WHICH PROHIBITS A ZONING ORDINANCE OR REGULATION FROM RESTRICTING THE NUMBER OF OCCUPANTS IN A RESIDENTIAL RENTAL PROPERTY TO LESS THAN 2 OCCUPANTS PER BEDROOM

WHEREAS, a State House Bill has been proposed within the Municipal and County Government Committee regarding the regulation of the number of occupants within a rental property; and

WHEREAS, the Bill would prohibit a local government's Zoning Ordinance from restricting the number of unrelated occupants in a residential rental property to less than 2 occupants per bedroom; and

WHEREAS, Durham is host to UNH's flagship campus, and therefore, has a significant presence of college students who impact the socio-economic characteristics of our town of 15,410 residents. In comparison, UNH had enrollment of 13,712 students at the Durham campus in the Fall of 2021; and

WHEREAS, managing student housing is a fundamental and overarching issue in the community; and

WHEREAS, the construction of approximately 2,400 new privately-owned off-campus apartment beds in Durham since 2011 has created opportunities for in-commuting students to move into local student housing from surrounding communities in Strafford and Rockingham Counties, freeing up regional apartments for traditional workforce housing; and

WHEREAS, the number of off-campus student-occupied ADUs/other smaller residences in town is approximately 85 units. These 85 units are generally located within the traditional residential family neighborhoods located in close proximity to the UNH campus and adjacent Durham downtown; and

WHEREAS, what is different about Durham's rental housing market, which is true of most college towns, is local rents are derived on a per-bed basis. This market factor creates an incentive for landlords and property owners to rent to students rather

than conventional renters because their gross monthly rent can be twice as high, driving up property prices and rents to the point that most conventional renters and families cannot compete financially against the student housing rental market and its investors; and

WHEREAS, family units behave fundamentally differently from non-family congregate living, particularly with student rentals; and

WHEREAS, while most people view college students as having less income or a lower ability to pay, many have their rent paid by their parents or through student loans and grants. Over time, lower rental rates increase to reflect market competition and inflationary influences. This works against workforce housing in Durham and in other nearby communities impacted by college student rental pressures; and

WHEREAS, in response and over many years, Durham has thoughtfully adopted a host of regulations including a noise ordinance, an open container ordinance, a trash ordinance, a disorderly house ordinance, parking ordinances, fire/life safety regulations, and more; but a cornerstone of the Town's ability to manage density within non-family housing units and thereby minimize negative health, safety, and general welfare impacts of such use is through local zoning; and

WHEREAS, on March 11, 1986 the Town of Durham voted for an amendment to the Zoning Ordinance which specified that "No more than 3 unrelated adults may occupy a household in an RA, RB or RC zone;" and

WHEREAS, since that initial amendment, there has been an additional change in the Zoning to restrict no more than 3 unrelated adults in the R, RA, RB, RC, CB, PO, CH, C and CC Zones; and

WHEREAS, Durham's "no more than 3-unrelated" zoning provision is a critical component of local efforts to preserve affordable housing and traditional neighborhoods close to campus. It is constitutional, consistent with the Federal Fair Housing Act, and keeps off campus non-family housing density manageable; and


WHEREAS on October 19, 2010 Justice Kenneth C. Brown ruled for the Town on a charge against the three-unrelated rule in *Paul Mackin v Town of Durham Zoning Board of Adjustment* stating that "The New Hampshire Supreme Court has addressed the issue of whether the 'three unrelated' rule was constitutional in *Town of Durham v White Enterprises Inc.*, 115 N.H. 645(1975). The Court in *White Enterprises* noted that while the State has an interest in keeping families together, the same policy concerns do not apply when unrelated people wish to cohabitate. *Id.* At 649;" and

WHEREAS, Judge Brown also stated in this same case that "The petitioner's assertion that the Fair Housing Act may have altered these holdings is misguided. The Fair Housing Act prohibits housing discrimination based on familial status."; and


WHEREAS, on February 2, 2024, Administrator Selig wrote a letter to the Municipal and County Government Committee outlining the Town's objection to HB1281;

NOW, THEREFORE, BE IT RESOLVED, that the Durham Town Council, the governing and legislative body of the Town of Durham, New Hampshire does hereby approve **Resolution #2024-06** opposing HB1281.

PASSED AND ADOPTED by the Town Council of the Town of Durham, New Hampshire this 19th day of February, 2024 by 9 affirmative votes, 0 negative votes, and 0 abstentions.


Sally Needell, Chair
Durham Town Council

ATTEST:


Rachel Deane, Town Clerk-Tax Collector