



TOWN OF DURHAM
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RESOLUTION #2025-02 OF DURHAM, NEW HAMPSHIRE

A RESOLUTION OPPOSING HOUSE BILL 457, WHICH PROHIBITS A ZONING ORDINANCE FROM RESTRICTING THE NUMBER OF OCCUPANTS OF A DWELLING UNIT TO FEWER THAN 2 OCCUPANTS PER BEDROOM AND PROHIBITS THE ADOPTION AND ENFORCEMENT OF ANY ZONING ORDINANCE THAT DISCRIMINATES BASED ON FAMILIAL, NON-FAMILIAL OR MARITAL STATUS; AND SUPPORTING INSTEAD AN AMENDMENT TO HB 457 (JANUARY 28, 2025 2025-0125H 09/02), INTRODUCED BY REP. AL HOWLAND (STRAF. 20).

WHEREAS, a State House Bill has been proposed and will be coming before the House Housing Committee regarding the regulation of the number of occupants within a dwelling unit; and

WHEREAS, the Bill would prohibit a local government's Zoning Ordinance from restricting the number of unrelated occupants in a dwelling unit 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 11,387 undergraduate students at the Durham campus in the Fall of 2023; and

WHEREAS, managing student housing is a fundamental and overarching issue in the Durham community, as well as in the Towns of Plymouth, Keene, and Hanover; 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 producing ample off campus housing for college students; and

WHEREAS, professional landlords in Durham, many represented by the Durham Landlords Association, report their occupancy levels are down from the traditional near 100% level to a current 80 - 90% occupancy, which is of significant concern to them, particularly amidst a softening enrollment at UNH; 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 seeking workforce housing 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 workforce housing units behave fundamentally differently from non-family commercial congregate living catering to undergraduate college students, particularly with per bed student rentals with individual leases promoting a transient "boarding house" atmosphere; 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 significantly by college student rental pressures; and

WHEREAS, in response and over many decades, 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 commercial college student housing units and thereby minimize negative health, safety, and general welfare impacts of such commercial use for *both* inexperienced college students who can easily be taken advantage of by unscrupulous landlords and for the community as a whole who experience the impact of off campus commercial student rentals in traditional residential neighborhoods has been through local zoning; and

WHEREAS, on December 16, 2024, the Town Council adopted a major change to Durham's zoning ordinance establishing a new Attainable Housing Overlay District, which is designed to provide a broad range of living options, including a variety of dwelling types at affordable prices, that meet the needs of families and individuals representing NH's diverse workforce and those of moderate means, including retirees, who are not currently employed; and

WHEREAS, the NH Supreme Court has ruled in Paul Mackin v. Town of Durham Zoning Board of Adjustment that Durham's historical "Three-unrelated"

zoning provision is constitutional, is consistent with the Federal Fair Housing Act, and does not discriminate against college students. Further the NH Supreme Court has held that the Federal Fair Housing Act was *not* meant to protect a group of unrelated people, but rather to uphold the state's interest in protecting families from housing discrimination; and

WHEREAS, the Town of Durham does not support discrimination; and

WHEREAS, student rentals in Durham are a commercial use, and

WHEREAS, the designation of commercial zones and uses versus residential zones and uses within a community is an appropriate use of local zoning and helps to preserve the local character of New Hampshire municipalities; and

WHEREAS, on January 8, 2025, at the request of Administrator Todd Selig and Rep. Al Howland (Straf. 20), the Durham Planning Board, with help from the Housing Task Force and a working group of staff and officials pulled together by the Administrator, initiated an amendment to the Zoning Ordinance to create a commercial definition for student rental, which replaced Durham's "Three-unrelated rule;" and

WHEREAS, the Council adopted Ordinance #2025-03 that creates a commercial zoning use entitled student rental, defined as a residential dwelling composed of one or more dwelling units on a single parcel that includes five or more full time undergraduate college students, as identified according to the criteria of the U.S. Department of Education's Office of Student Federal Aid, which would be a permitted commercial use within the Central Business Zoning District, Professional Office Zoning District, Church Hill Zoning District, and Courthouse Zoning District, all of which are commercial in nature, serviced by Wildcat Transit bus service, and are walkable to the core UNH campus; and

WHEREAS, under this zoning change, four or fewer undergraduate college students would be able to live together in all zoning districts anywhere in town; and

WHEREAS, the change limits occupants in a dwelling unit based on the State Fire Code; and

WHEREAS, the Town Council believes there is a public benefit to occupancy being based uniformly across New Hampshire on the State Fire Code; and

WHEREAS, Durham State Representative Al Howland (Straf. 20) will introduce an amendment to HB 457 (2025-0125h), which would amend RSA 674:16 by including after paragraph VII a new paragraph that provides, "*In its exercise of the powers granted under this subdivision, the legislative body of a city, town, village district, or county in which there are located unincorporated towns or unorganized places shall not adopt any occupancy ordinance that is more restrictive than allowed by the state fire code, RSA 153:1, VI-a.*" If the

NH House Committee on Housing concludes a change is warranted to RSA 674:16, the Town Council believes the amendment presented by Rep. Howland (January 28, 2025 2025-0125h 09/02), to be an appropriate solution.

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 #2025-02** opposing HB457 as originally introduced, and supporting instead an amendment to HB457 (2025-0125h 09/02), provided by Durham Rep. Al Howland (Straf. 20).

PASSED AND ADOPTED by the Town Council of the Town of Durham, New Hampshire this 17th day of February, 2025 by 7 affirmative votes, 0 negative votes, and 0 abstentions.



Sally Needell, Chair
Durham Town Council

ATTEST:



Rachel Deane, Town Clerk-Tax Collector