

Should North Carolina Cities be Required to Have a Housing Element?

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One strategy to promote affordable housing is for the state legislature to mandate that local governments make provisions for more low-cost units. Many states have passed laws requiring towns and cities to inventory their housing stock and carry out plans to correct imbalances. Candace Stowell discusses the lack of such legislation in North Carolina as well as numerous examples of housing elements that have been implemented by other states.

Although many states around the country either require or authorize local jurisdictions to prepare housing elements as part of the comprehensive plan, North Carolina's planning laws make no mention of housing elements. A housing element law in North Carolina could not only provide needed guidance to jurisdictions that want to address affordable housing needs, but could also provide the necessary "stick" to jurisdictions that attempt to avoid affordable housing in their communities through exclusionary policies or regulations. When towns declare that all single family homes must have a two car garage or else prohibit multifamily residential zoning districts, such practices limit housing choice and deny opportunity to low-income households that need affordable housing. Requiring cities and counties to have a comprehensive plan housing element would help expand housing opportunity for existing and future residents of North Carolina.

Current Housing Needs in North Carolina

According to the 2006 American Community Survey, there are 3,454,068 households in North Carolina, including 1,103,270 renter households (32%) and 2,350,798 owner-occupied households (68%). According to the Survey, there are 622,595 renter-occupied households with incomes below \$35,000 and 72 percent of these households are cost burdened. In terms of owner-occupied households, the Survey found that of the 710,183 households with incomes below \$35,000, 53 percent of the households were cost burdened.

Many low-income households are not able to access affordable housing for the following reasons: 1) the demand for affordable rental units and housing

choice vouchers managed by local housing authorities grossly exceeds the supply with long waiting lists or even closed waiting lists in some jurisdictions; 2) many affordable units are actually occupied by households that can afford more expensive housing units, thus restricting the supply of affordable units; and 3) many older market rate rental units are disappearing, particularly in strong housing markets such as the City of Raleigh, where there is pressure for infill redevelopment.

Current State Law and the NC Smart Growth Commission

North Carolina planning statutes do not require or even encourage housing elements for counties or cities. North Carolina finds itself among a shrinking number of states that still lack specific language concerning housing elements. More troubling is the fact that state law does not require or even define the contents of a comprehensive plan. State law was amended last year to increase consistency standards between zoning decisions and the comprehensive plan but still does not explicitly define a comprehensive plan. Many North Carolina jurisdictions have zoning regulations and no comprehensive plan and of course many counties do not have either a comprehensive plan or zoning regulations.

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One of the more recent attempts to change state law occurred with the Smart Growth Commission. In 1999, the State Legislature created a Commission to Address Smart Growth, Growth Management, and Development Issues. The Commission was established with 37 members representing many different sectors and was charged to carry out seven specific tasks including “protect housing affordability and assure consumer choice.” There were three workgroups created as part of the Smart Growth Commission and many of the recommendations regarding affordable housing came out of the Community and Downtown Vitality work group. Goal #6 of the Workgroup stated “Stimulate a Full Range of Housing Opportunities in Downtown Areas, nearby neighborhoods, and other concentrated centers of economic activity.” To implement this particular goal, the Community and Downtown Vitality Group not only recommended that state legislation needed to be enacted to enable all “localities to implement inclusionary housing programs,” but also recommended that all “local growth plans address the issue of affordable housing, including both single-family homeownership and multi-family needs.” Unfortunately, none of these housing recommendations evolved into potential bills.

Housing Element Laws in Other States

During the last two decades the trend has been for States to either adopt or else strengthen housing element laws. This article will examine the housing element practices of the states of Nevada and California.

Nevada

Since the American Planning Association had its first national conference in Las Vegas, Nevada, in April 2008, it is interesting to look at how this state addresses the housing element. Nevada not only defines the contents of a master plan, but also requires counties above 100,000 (as well cities within these counties) to adopt specific elements, including a housing element. In 1995, the Nevada State Legislature amended the master plan law (NRS 278.160) and specified that a housing plan needed to include the following items:

1. An inventory of housing conditions, needs and plans and procedures for improving and for providing adequate housing to individuals and families in the community regardless of income level.
2. An inventory of existing affordable housing in the community, including without limitation, housing that is available to rent or own, housing that is subsidized either directly or indirectly by the State, an agency or political subdivision of this State, or the Federal government or an agency of the Federal Government and housing that is accessible to persons with disabilities.
3. An analysis of projected growth and the demographic characteristics of the community.
4. A determination of the present and prospective need for affordable housing in the community.
5. An analysis of any impediments to the development of affordable housing and the development of policies to mitigate those impediments.
6. An analysis of the characteristics of the land that is suitable for residential development. The analysis must include, without limitation:
 - i) a determination of whether the existing infrastructure is sufficient to sustain the current needs and projected growth of the community; and
 - ii) an inventory of available parcels that are suitable for residential development and any zoning, environmental and other land-use planning restrictions that affect such parcels.
7. An analysis of the needs and appropriate methods for the construction of affordable housing or conversion or rehabilitation of existing housing to affordable housing.
8. A plan for maintaining and developing affordable housing to meet the housing needs of the community for a period of at least 5 years.

In 2007, the Nevada Legislature went even further and amended the planning statutes in order to require jurisdictions to actually adopt specific housing strategies. NRS 278.35 describes 12 specific strategies, and local entities are required to adopt at least six of these strategies. Further, Nevada counties and cities covered by the planning law must submit an annual report to the State describing how the strategies helped to address affordable housing needs. The twelve strategies contained in NRS 278.35 are as follows:

1. At the expense of the city or county, as applicable, subsidizing in whole or in part impact fees and fees for the issuance of building permits collected pursuant to NRS 278.580.
2. Selling land owned by the city or county, as applicable, to developers exclusively for the development of affordable housing at not more than 10 percent of the appraised value of the land, and requiring that any such savings, subsidy or reduction in price be passed on to the purchaser of housing in such a development. Nothing in this paragraph authorizes a city or county to obtain land pursuant to the power of eminent domain for the purposes set forth in this paragraph.
3. Donating land owned by the city or county to a nonprofit organization to be used for affordable housing.
4. Leasing land by the city or county to be used for affordable housing.
5. Requesting to purchase land owned by the Federal

- Government at a discounted price for the creation of affordable housing pursuant to the provisions of section 7(b) of the Southern Nevada Public Land Management Act of 1998, Public Law 105-263.
6. Establishing a trust fund for affordable housing that must be used for the acquisition, construction or rehabilitation of affordable housing.
 7. Establishing a process that expedites the approval of plans and specifications relating to maintaining and developing affordable housing.
 8. Providing money, support or density bonuses for affordable housing developments that are financed, wholly or in part, with low-income housing tax credits, private activity bonds or money from a governmental entity for affordable housing, including, without limitation, money received pursuant to 12 U.S.C. § 1701q and 42 U.S.C. § 8013.
 9. Providing financial incentives or density bonuses to promote appropriate transit-oriented housing

Planning Raleigh 2030

The City of Raleigh Comprehensive Plan update began in the summer of 2007 and is expected to conclude with the adoption of a new Comprehensive Plan by May 2009. The City hired HNTB as the principal consultant for the Comprehensive Plan in addition to several other consultants that specialize in public facilitation, economic development, parks and environmental planning, public utilities, and other related aspects. To date, the Planning Department has held three visioning workshops around the City and just completed a second round of three workshops in March that focused on specific issues informing the Comprehensive Plan. The Planning Department has also participated in a number of community meetings and issue-focused roundtable discussion on the Comprehensive Plan.

Planning Raleigh 2030 Comprehensive Plan Timeline

(www.planningraleigh2030.com)

Timeline	Item	Purpose
November 2007-February 2008	First Round of Workshops and Presentations on the Comprehensive Plan	To identify themes and solicit issues from public and elected officials
January-April 2008	Comprehensive Plan Roundtables	Five roundtables held to date with different stakeholders groups. Notes from these roundtables will be posted on the Comprehensive Plan website
March 2008	Second Round of Workshops Release of Draft Community Inventory Chapters	Second round of workshops held March 25-27 and included break out tables on housing choice, economic prosperity and equity, growing successful neighborhoods and communities, managing our growth, and coordinating land use and transportation
October 2008	Draft Comprehensive Plan released to public	
November 2008	Third Round of Workshops	To receive comments on the Draft Comprehensive Plan from the public
January 2009	Final Draft Plan published and submitted to City Planning Commission and City Council for public hearings	
January – March 2009	Public Hearings before Planning Commission and City Council	

developments that would include an affordable housing component.

10. Offering density bonuses or other incentives to encourage the development of affordable housing.
11. Providing direct financial assistance to qualified applicants for the purchase or rental of affordable housing.
12. Providing money for supportive services necessary to enable persons with supportive housing needs to reside in affordable housing in accordance with a need for supportive housing identified in the 5-year consolidated plan adopted by the United States Department of Housing and Urban Development for the city or county pursuant to 42 U.S.C. § 12705 and described in 24 C.F.R. Part 91.

California

One of the most comprehensive housing element laws is in California. The original housing element law was adopted in 1969, and since then, the State of California has expanded the scope and significance of this statute. California Government Code Section 65583 specifies four main components of housing elements:

1. A Needs Assessment and Inventory of Constraints and Resources
2. Statement of Goals, Quantified Objectives, and Policies
3. Five-Year Housing Program
4. Public Participation

The California Department of Housing and Community Development reviews all local housing elements. This certification process has become a de-facto mandatory review since many jurisdictions

expect that a successful certification by HCD will help prevent litigation. Housing elements in California must be prepared every five years and must include the identification of adequate sites for affordable housing.

In 2001, the housing element law in California was amended further to provide additional guidance regarding housing for persons with disabilities. The housing element law now requires local governments to identify constraints on the development of housing for persons with disabilities and must demonstrate efforts to remove these constraints or provide reasonable accommodation for housing designed for persons with disabilities.

Other States

The table below summarizes the housing element laws in several other states.

North Carolina

If North Carolina were to ever adopt a housing element law, the contents would be very similar to the requirements outlined in several other states and would no doubt include the following items:

1. Housing Inventory and Location of Both Market Rate and Assisted Housing Units in the Jurisdictions
2. Existing Housing Conditions
3. Inventory of Vacant Residential Parcels
4. Affordable Housing Needs and Analysis of Needs for Specific Population Groups
5. Supportive Housing Needs for Persons with Disabilities and Homeless Populations
6. Fair Housing Issues
7. Available Resources (funding, land, etc.) to Address Housing Needs
8. Existing Regulatory or Policy Barriers
9. Goals, Strategies, and Actions to Address Identified Housing Needs During a Five Year Period

State Requirements for Housing Elements

State	Housing Element Requirement
Arizona	Arizona requires housing element for cities over 50,000 and authorizes housing elements for other cities (Arizona Revised Statutes Section 11-821)
New Jersey	New Jersey requires comprehensive plans to include a housing element (New Jersey Statutes, Section 40:55D-28) that includes a housing inventory, the existing and projected housing demand, and the identification of land available for affordable housing. The New Jersey Fair Housing Act (1985) set up the Council on Affordable Housing to determine the fair share allocation of affordable housing throughout the State. Cities may request COAH to certify housing elements and fair share plans (New Jersey Statutes Annotated Section 52:27D-310)
South Carolina	South Carolina Code Annotated, Section 6-29-510, requires local comprehensive plans to have a housing element that examines existing conditions, includes needs and goals, and sets schedules for implementation strategies

Final Thoughts

There are many housing issues in North Carolina. The State needs to have a dedicated revenue source to support the Housing Trust Fund, as is the case in other states around the country. In addition, there needs to be consistent legislation on inclusionary housing. At the current time, only certain communities, such as Durham and Winston-Salem, have been given explicit authority to carry out voluntary inclusionary zoning programs. Although a housing element law will not fix all of the housing issues in North Carolina, it will raise the bar on how local jurisdictions address housing needs.

The creation of a housing element law will present an opportunity to allow jurisdictions to use various affordable housing strategies, such as inclusionary housing. Local jurisdictions, both cities and counties, should be able to adopt inclusionary housing programs provided that they establish a sound housing needs analysis, have identified housing needs and proposed housing strategies as part of their housing element, and

have adopted inclusionary housing regulations in their respective zoning regulations.

As with many planning issues, there is no doubt that smaller jurisdictions would find it difficult to comply with a new housing element law unless technical assistance was provided either directly from the Division of Community Assistance (DCA) in the Department of Commerce or else funded by DCA. It also goes without saying that before North Carolina adopts a strong housing element law, enabling statutes will have to specify the contents of the comprehensive plan.

Resources for Readers

- APA Policy Guide on Housing (2006)
- APA Affordable Housing Reader
- HousingPolicy.org
- 2006 AICP Webcast on The Housing Plan
- HUD Regulatory Barriers Clearinghouse
- Journal of the American Planning Association (JAPA)
 - Winter 2008 issue on Housing

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