

Chapter Two

A Primer on Workforce Housing in New Hampshire

A. Introduction: The Terms in the Workforce Housing Statute

The State’s workforce housing statute requires all communities to provide “reasonable and realistic opportunities” for workforce housing, including rental multi-family housing. Additionally, the law requires that such housing is permitted in the majority of the residentially zoned land in each municipality. For an opportunity to be reasonable and realistic, workforce housing must be “economically viable.”

To achieve this, the statute specifically states that lot sizes and densities required by local ordinances and regulations must be reasonable, but does not numerically define “reasonableness.” Rather, it leaves it up to each city or town to determine what alternatives provide the best solutions in the context of the municipality’s unique regulatory scheme. The Legislature clearly stated that it intended to provide communities with the “maximum feasible flexibility” to meet their workforce housing obligations.

A municipality can meet the statute’s requirements in two basic ways:

- Adopt or have in place land use ordinances and regulations that permit some type of economically viable workforce housing in a majority of its residentially zoned land and that provide a reasonable opportunity for rental multi-family workforce housing somewhere in the community; or
- Demonstrate that the existing housing stock of the city or town is sufficient to accommodate the municipality’s fair share of the current and reasonably foreseeable regional need for workforce housing.

B. Some Definitions

In order to properly understand the workforce housing statute, one needs to first be familiar with the terms used in it and with workforce housing in general.

1. Threshold Terms

a. Workforce Housing

Workforce housing is a term used to describe a variety of housing types that are generally affordable to people in the workforce who have earnings that range up to what might be described as “middle income.” In the statute, “workforce housing” specifically refers to housing that is affordable for those families whose income is at or below the median income level for a specific region. In the statute, it is defined as:

- Housing for sale which is *affordable* to a household at or below 100% of the area median income (AMI) for a 4-person household; or
- Rental housing *affordable* at 60% of the AMI for a 3-person household.

In addition to this income-based definition, there are some limitations on what can be considered workforce housing. When a local land use board is presented with a development application, housing that is either age-restricted (elderly or senior housing) or developments in which a majority of the proposed homes have fewer than two bedrooms (e.g., studio apartments and one-bedroom homes or apartments) may not to be considered as workforce housing under the statute. This should not be construed to mean that such housing is not needed or without value to the community; it only means that a developer cannot rely on the advantages of the Workforce Housing statute for new proposals for such developments. The intent of these exclusions is to ensure that housing opportunities are made available for members of the workforce and their families – not only for seniors or other households with no children present.

b. Multi-Family Housing

Under the workforce housing statute *multi-family housing* is defined as a building or structure containing five (5) or more dwelling units, each designed for occupancy by an individual household. Correspondingly, in order for a municipality to fully comply with the workforce housing statute, the land use regulations of that municipality must permit the construction of *rental* multi-family housing structures.

Multi-family housing is a housing type that must be included in each municipality’s mix of permitted uses. Although rental multi-family housing must be a component of a municipality’s workforce housing development opportunities, a community does not need to provide the opportunity for multi-family housing in the majority of its residentially

zoned land—it only needs to make some reasonable provision for it to be built somewhere within the municipality.

Additionally, while the threshold number of dwelling units that define multi-family housing for workforce housing is five units or more, the jurisdictional threshold for a planning board to conduct site plan review on multi-family housing under RSA 674:43 remains three or more dwelling units. Communities only need to change their definition for multi-family housing if their regulations actually prohibit the development of multi-family housing structures with at least five units.

Multi-family housing can take many structural forms but in New Hampshire it most commonly is provided in townhouses or “garden style” apartment arrangements. See New Hampshire Housing Finance Authority’s *Housing Solutions* handbook for examples.⁹

c. Affordability

The term “affordable” has often been used to describe, or has otherwise been associated with low-income housing, and often the terms affordable housing and low-income housing have been used interchangeably. Even as the statute addresses the concept of affordability, the term “workforce housing” targets a broader segment of the population than traditional notions of “low-income housing.”

The workforce housing statute defines “affordable” housing as:

housing with combined rental and utility costs or combined mortgage loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household's gross annual income.

Affordability is a key component to how workforce housing is defined, as housing for sale or for rent which is affordable. The affordable component to workforce housing ensures that only 30% of a household’s income is used in calculating the cost for a home, leaving 70% of a family’s remaining income for all other expenses. This ratio has long been a standard used to determine a household’s ability to pay for housing.

Although the affordability standard can apply to all income levels, people with higher incomes tend to have far more disposable income. The concept of affordability provides the potential for a range of housing types corresponding to a range of incomes. But the goal of the workforce housing statute is to ensure that an adequate supply of affordable housing is available for those families whose incomes are at or below 100% of an area’s median income.

⁹ *Housing Solutions* is available at http://www.nhhfa.org/rl_housinghandbook.cfm.

d. Area Median Income

Area median income (AMI) is the income which divides the income distribution of an area into two groups of equal size, half with incomes above the median and half with incomes below the median. The medians for households, families, and unrelated individuals are based on all households, families, and unrelated individuals, respectively. The medians are based on people 15 years old and over with income.¹⁰

The U.S. Department of Housing and Urban Development (HUD) has divided the State into regions and annually calculates median incomes for different family sizes for each region. These income standards are reported each year in the spring, and are available on New Hampshire Housing's website.¹¹

The workforce housing statute uses the HUD AMI figures as the standard upon which housing affordability is calculated.

2. Compliance With the Statute's Requirements

A municipality can meet the statute's requirements in two basic ways: (1) provide reasonable and realistic opportunities for workforce housing development; or (2) demonstrate that the community is already providing its "fair share" of workforce housing.

a. Reasonable and realistic opportunities

The workforce housing statute requires that every community must provide "reasonable and realistic opportunities" for the development of economically viable workforce housing within the framework of the municipality's land use ordinances and regulations.¹² This requires consideration of the "collective impact" of all such regulations, so even if a community's zoning ordinance seems to provide adequate opportunity for workforce housing development, the planning board's subdivision and site plan regulations might contain development standards that make construction of workforce housing unprofitable, or a growth management ordinance might cause considerable delay to a project's completion, thereby adding costs that make the development economically unviable.

But the statute also recognizes that a community is not responsible for economic conditions beyond its control that affect the economic viability of a workforce housing

¹⁰ "Housing Affordability: Frequently Asked Questions." U.S. Census Bureau, Housing and Household Economic Statistics Division, available at <http://www.census.gov/hhes/www/housing/hsgaffrd/affrdfaq.html>.

¹¹ Current HUD income figures are available from NHHFA at http://www.nhhfa.org/rl_docs/hudincome_current.pdf.

¹² In addition to the workforce housing statute, the statutory purpose statement provided under RSA 672:1, III-e, for overall land use regulation in New Hampshire requires that the opportunity for the creation of affordable housing "shall not be prohibited or unreasonably discouraged by use of municipal planning and zoning powers or by unreasonable interpretation of such powers."

development. Communities are also not responsible for the impacts of other laws administered at the state level, such as those enforced by the Department of Environmental Services. But when identifying areas within their jurisdiction where workforce housing will be permitted, municipalities must be careful to ensure that those areas are not unduly restricted by natural features, such as wetlands or steep slopes. In short, the places where workforce housing is permitted must actually be suitable for development.

The economic components of a development project that a community can influence through its land use regulations will be addressed in detail in Chapter 3 to help better illustrate those costs for which a municipality is responsible, and those for which it is not responsible.

b. Fair Share

Under RSA 674:59, III, a municipality may be exempt from providing a reasonable or realistic opportunity to build workforce housing if its existing housing stock is sufficient to accommodate its “fair share” of the current and reasonably foreseeable regional need for workforce housing.

When the New Hampshire Supreme Court ruled in 1991’s *Britton v. Town of Chester* that every community has an obligation to provide for its fair share of a region’s affordable housing need, it left that term undefined. The workforce housing statute similarly does not define what is meant by fair share. Although some models have been established for determining what constitutes fair share,¹³ presently there is no required method by which to calculate a community’s fair share of workforce housing based upon regional need. In 2004, New Hampshire Housing published a Housing Needs Assessment Model with the suggestion that it could be used by the State’s regional planning commissions when they conduct their regional housing needs assessments, which they are required to do every five years (RSA 36:47, II).¹⁴ This assessment model also contains a methodology for conducting a fair share analysis (also called “proportionate distribution”), recommended by New Hampshire Housing.¹⁵

A municipality may want to determine its “quota” of workforce housing, but the State Supreme Court and the Legislature have steered clear of mandating a specific numerical standard. It may be useful to regard fair share as a principle, not a quota, and that providing the opportunity for workforce housing development for most communities is the key to meeting the statute’s requirements.

Although the workforce housing statute does not provide a standard by which to determine fair share, it is actually unnecessary for a community to identify what its fair share responsibility is. As long as the municipality is providing realistic and

¹³ Some states have established a numerical standard that requires municipalities to have a minimum percentage of their as affordable, or they must take steps to allow it to be built.

¹⁴ This model was recently updated to reflect the changing nature of available data.

¹⁵ Available at http://www.nhhfa.org/rl_needsassess.cfm. See “Appendix 2: Distributive Models for Low Income Housing.”

reasonable opportunities for the development of workforce housing, the question of fair share is irrelevant. A fair share analysis is necessary only if and when a community wishes to claim that it is exempt from providing reasonable and realistic opportunities for the development of new workforce housing.

The fair share question truly arises when a municipality is sued under the statute. The community may assert as an “affirmative defense” that because it has already met its required fair share of the regional need for workforce housing, it is not obligated under the statute to provide the opportunity for its continued development. If the framework of a community’s land use regulations and ordinances provide reasonable and realistic opportunities for the development of workforce housing then conducting a fair share analysis is an unnecessary exercise.

Under the statute, fair share takes both a present and prospective view of the demand for housing in a region. What constitutes the appropriate region for a fair share analysis may vary from one community to another:

- for one, it might be the reach of a regional planning commission;
- for another it might be the labor market area;
- for yet another, it might be the HUD fair market rental area.¹⁶

Several of the State’s regional planning commissions have provided guidance on the fair share question, and they are likely to be the best source of information for a community. Any community considering whether to undertake a fair share analysis should contact its regional planning commission (RPC) to discuss and review the data obtained from the municipality’s research into its own assessing data. The findings in the RPC’s reports may provide the community with enough information to make a determination of its own housing needs.

The requirement that an RPC must prepare a regional housing needs assessment does not, however, compel it to undertake a fair share analysis that would distribute the regional need among its communities. Such an analysis is done at the RPC’s option and cost.

c. Inclusionary Zoning

RSA 674:59, I states that a municipality’s obligations “*may be satisfied by the adoption of inclusionary zoning as defined in RSA 674:21, IV(a)*”. Inclusionary zoning is an ordinance that provides a voluntary incentive or benefit to a property owner in order to induce the owner to produce housing units that are affordable to households of low and moderate income. Inclusionary zoning includes, but is not limited to, density bonuses, growth control exemptions, and a streamlined application process. This topic will be addressed further in Chapter 4.

¹⁶ The statute does not limit what region a community may consider if it conducts its own fair share analysis, but it *does* limit the use of household income standards to those provided by HUD. See discussion of “Area Median Income,” above.

C. Determining Workforce Housing Purchase and Rent Limit Values

The statute's definitions for "affordable" and for "workforce housing," with the latter's income target, when used in combination help to establish a price point for housing, the development of which is the statute's objective. New Hampshire Housing supplies a listing of communities by HUD Fair Market Rent Area (FMRA) that will assist a community in determining its area median income (AMI), included in Appendix A.¹⁷

New Hampshire Housing also annually updates "Workforce Housing Purchase and Rent Limits" for all HUD areas of the State. This takes the median household incomes for the HUD areas and applies a series of reasonable market-based assumptions to calculate affordable estimated purchase price and monthly rents for all areas of the State.

Using HUD Income Data to Determine Maximum Affordable Purchase Prices and Rents

As an example, for the **Manchester** Fair Market Rent Area (FMRA), the median income for 2010 for a family of four, as determined by the *United States Department of Housing and Urban Development* (HUD) is \$75,600. The estimated maximum affordable purchase price for ownership housing in that market is \$239,000 using the 2010 income. For affordable rental housing, the monthly rent is determined by taking 60% of the 2010 FMRA median income adjusted for a family of three (\$40,820), which would yield a maximum a monthly rent of \$1,020 (including utilities) for 2010.

Similarly, if the community were **Plainfield**, the FMRA would be Sullivan County. The Sullivan County FMRA median income for 2010, for a family of four as determined by HUD is \$64,900. The estimated maximum affordable purchase price for housing in that market is \$203,000 for 2010. For affordable rental housing, the maximum monthly rent is determined by taking 60% of the 2010 FMRA median income adjusted for a family of three (\$35,050). This would yield a maximum monthly rent of \$880 (including utilities) for 2010.

Both of the examples above recognize the statutory requirement that housing affordability is based on a standard of having a household pay no more than 30 percent of its income on housing costs. As demonstrated here, the differences in median income levels and consequently the price point that constitutes workforce housing can be significant depending on where in New Hampshire one lives.

¹⁷ Also available online at http://www.nhhfa.org/bp_docs/devdocs/FMRareas-HUDmetroFMR.pdf.

Figure 2-1

2010 Workforce Housing Purchase and Rent Limits, [RSA 674:58 - 61](#)

This is an update to information that New Hampshire Housing provided to the Legislature in 2008 as it deliberated on the Workforce Housing statute. The purpose of this table is to assist municipalities in implementing the NH Workforce Housing statute, RSA 674:58 - 61. This analysis incorporates statutory requirements, and includes reasonable market assumptions for the targeted households' income levels such as interest rate, downpayment, mortgage term, taxes, and insurance.

	Ownership 100% of 2010 HUD Median Area Income Family of four		Renters 60% of 2010 HUD Median Area Income Adjusted for a family of three	
	Income	Estimated Affordable Purchase Price ¹	Income	Estimated Affordable Monthly Rent ²
HUD Metropolitan Fair Market Rent Areas (HMFA):				
Boston-Cambridge-Quincy MA-NH	\$91,800	\$316,000	\$49,570	\$1,240
Hillsborough Co. NH (Part)	\$77,500	\$241,000	\$41,850	\$1,050
Lawrence, MA-NH	\$85,300	\$268,000	\$46,060	\$1,150
Manchester, NH	\$75,600	\$239,000	\$40,820	\$1,020
Nashua, NH	\$90,500	\$285,000	\$48,870	\$1,220
Portsmouth-Rochester, NH	\$81,600	\$261,000	\$44,060	\$1,100
Western Rockingham Co, NH	\$96,100	\$305,000	\$51,890	\$1,300
County Fair Market Rent Areas (Non Metro):				
Belknap County	\$67,400	\$222,000	\$36,400	\$910
Carroll County	\$62,600	\$219,000	\$33,800	\$850
Cheshire County	\$67,100	\$202,000	\$36,230	\$910
Coos County	\$54,900	\$170,000	\$29,650	\$740
Grafton County	\$68,000	\$220,000	\$36,720	\$920
Merrimack County	\$76,700	\$238,000	\$41,420	\$1,040
Sullivan County	\$64,900	\$203,000	\$35,050	\$880

¹ Estimated maximum price using 30% of income, 5% down payment, 30year mortgage at 5.05%, 0.7 points, PMI, and estimated taxes and hazard insurance.

² Estimated maximum gross monthly rental cost (rent + utilities), using 30% of income.

File: 2010 WH Purchase And Rent Limits - 2010
Print Date: 5/31/2010

The purpose of this table is to assist municipalities in implementing the workforce housing statute by incorporating statutory requirements, and also by including reasonable market assumptions for targeted household income levels. These assumptions include provision for a 5 percent down payment. If the amount of a down payment were increased to either 10 or 20 percent, the estimated purchase limit values would also increase. Conversely, the number of households that could afford the correspondingly higher home price would decrease. For households at or below the median income level for any area of the State, workforce housing is intended to be a price at which they can enter the market and start to build equity. It is unlikely that such households would have the resources at hand to afford a high down payment. Following NHHFA guidelines and assumptions can help to achieve the goal of allowing families to enter the ownership market, while also providing some assurance to communities that their workforce housing goals are aligned with the statute. NHHFA will revise this table annually to reflect new HUD income figures, and these updates will be available on the NHHFA website.

D. Identifying Who the “Workforce” Is In the Workforce Housing Statute

Over the last couple decades, even as wages have increased, these gains have been dramatically outstripped by an increase in cost of housing in New Hampshire. In many instances, people with an income close to median for a given area are simply unable to afford housing that is relatively near where they work. They then must commute ever longer distances – “drive until you qualify.” This often has a negative impact on productivity, morale, family dynamics, and employees’ ability to contribute to the communities in which they live and work.¹⁸

There is a wide range of occupations that fall within the impact of the workforce housing statute, based on the incomes they provide to the labor force. Types of careers commonly available throughout New Hampshire with corresponding income levels that typically qualify for workforce housing include:

- ◆ Education Administrators
- ◆ Accountants
- ◆ Appraisers
- ◆ Architects
- ◆ Civil Engineers/Land Surveyors
- ◆ Foresters
- ◆ Paralegals
- ◆ Teachers & Educators
- ◆ Librarians
- ◆ Police Officer
- ◆ Firefighters
- ◆ Food Prep / Food Service Workers

The *New Hampshire Economic and Labor Market Information Bureau* publishes estimated annual occupational and employment wages for approximately 600 different occupations.¹⁹ The following table provides a list of some jobs, by county, whose median salaries represent those expected to benefit from the workforce housing statute.

¹⁸ These price-induced commuting patterns also contribute to increased highway maintenance costs and environmental degradation, including pollution of air and water resources, and increased emissions of greenhouse gasses.

¹⁹ More information is available from NHES ELMI Bureau at <http://www.nh.gov/nhes/elmi/oesfiles.htm>.

Figure 2-2

Median Annual Income for Selected Occupations - June 2008

	Belknap	Carroll	Cheshire	Coos	Grafton	Hillsb.	Merr.	Rock.	Strafford	Sullivan
Elementary Teacher	\$50,670	\$43,955	\$46,729	\$45,054	\$50,753	\$52,274	\$51,130	\$46,881	\$53,427	\$44,085
Nurse	-	\$53,851	\$55,162	\$51,771	\$66,290	\$62,920	\$59,571	\$57,866	\$53,206	\$52,603
Police Officer	\$44,200	\$41,954	\$34,736	\$37,856	\$40,622	\$48,256	\$42,286	\$44,762	\$41,475	\$42,078
Accountant	-	-	\$53,539	-	-	\$53,414	\$47,174	\$58,573	\$61,006	\$42,120
Fire Fighter	\$29,682	-	-	\$40,810	\$35,173	\$41,954	\$35,506	\$45,552	\$35,194	-
Chef/Head Cook	\$28,621	\$39,333	\$28,600	\$36,962	\$38,542	\$38,002	\$34,070	\$36,338	\$38,459	\$32,198
Plumber	-	\$38,917	\$39,978	\$36,629	\$43,576	\$48,048	\$44,824	\$44,595	\$41,142	\$39,250
Mechanic	\$39,062	-	\$37,107	\$35,797	\$30,035	\$39,520	\$41,413	\$38,709	\$38,189	\$30,701
Bank Teller	\$24,606	\$25,272	\$24,440	\$20,946	\$23,962	\$25,189	\$24,981	\$24,482	\$24,918	\$25,667

New Hampshire Employment Security - Economic and Labor Market Information Bureau.
 Current wage estimates based on survey data.

From these data it is clear that there are many people employed in New Hampshire who would qualify for workforce housing when their household has only a single full-time wage earner. Even for households with two full-time wage earners, the combined hourly wage generally must exceed forty dollars (\$40) in most areas of the state to be above median, and thus be sufficient for that household not to need “workforce housing” as contemplated by statute.²⁰

To further illustrate the relationship between median incomes and affordable housing costs, two additional tables are provided. These tables reflect maximum affordable rents and home purchase costs based upon income data presented in Figure 2-1 and, consistent with the statute, using 30% of those incomes for housing costs. Figure 2-2 reflects maximum affordable rent applicable to each income group by county. In addition, Figure 2-3 outlines maximum affordable home purchase price values based upon this same income data.

²⁰ Roughly \$83,000 combined income for two full-time jobs.

Meeting the Workforce Housing Challenge

Figure 2-3

Maximum Affordable Rent & Utilities for Selected Occupations – June 2008

	Belknap	Carroll	Cheshire	Coos	Grafton	Hillsb.	Merr.	Rock.	Strafford	Sullivan
Elementary Teacher	\$1,267	\$1,099	\$1,168	\$1,126	\$1,269	\$1,307	\$1,278	\$1,172	\$1,336	\$1,102
Nurse	-	\$1,346	\$1,379	\$1,294	\$1,657	\$1,573	\$1,489	\$1,447	\$1,330	\$1,315
Police Officer	\$1,105	\$1,049	\$868	\$946	\$1,016	\$1,206	\$1,057	\$1,119	\$1,037	\$1,052
Accountant	-	-	\$1,338	-	-	\$1,335	\$1,179	\$1,464	\$1,525	\$1,053
Fire Fighter	\$742	-	-	\$1,020	\$879	\$1,049	\$888	\$1,139	\$880	-
Chef/Head Cook	\$716	\$983	\$715	\$924	\$964	\$950	\$852	\$908	\$961	\$805
Plumber	-	\$973	\$999	\$916	\$1,089	\$1,201	\$1,121	\$1,115	\$1,029	\$981
Mechanic	\$977	-	\$928	\$895	\$751	\$988	\$1,035	\$968	\$955	\$768
Bank Teller	\$615	\$632	\$611	\$524	\$599	\$630	\$625	\$612	\$623	\$642

Based on 30% of household income for Rent & Utility Allowance

Figure 2-4

Maximum Affordable Purchase Price for Selected Occupations - June 2008

	Belknap	Carroll	Cheshire	Coos	Grafton	Hillsb.	Merr.	Rock.	Strafford	Sullivan
Elementary Teacher	\$194,297	\$157,720	\$172,830	\$163,706	\$194,749	\$203,034	\$196,802	\$173,658	\$209,314	\$158,428
Nurse	-	\$211,624	\$218,765	\$200,294	\$279,380	\$261,023	\$242,781	\$233,494	\$208,111	\$204,826
Police Officer	\$159,054	\$146,820	\$107,503	\$124,498	\$139,565	\$181,148	\$148,629	\$162,116	\$144,211	\$147,496
Accountant	-	-	\$209,924	-	-	\$209,244	\$175,254	\$237,345	\$250,598	\$147,724
Fire Fighter	\$79,974	-	-	\$140,589	\$109,884	\$146,820	\$111,698	\$166,419	\$109,998	-
Chef/Head Cook	\$74,194	\$132,543	\$74,080	\$119,628	\$128,235	\$125,293	\$103,876	\$116,229	\$127,783	\$93,679
Plumber	-	\$130,277	\$136,057	\$117,815	\$155,655	\$180,015	\$162,453	\$161,206	\$142,397	\$132,091
Mechanic	\$131,067	-	\$120,418	\$113,283	\$81,897	\$133,562	\$143,873	\$129,144	\$126,312	\$85,524
Bank Teller	\$52,325	\$55,952	\$51,420	\$32,388	\$48,817	\$55,500	\$54,367	\$51,649	\$54,024	\$58,104

Based on 36% DTI, 30 year fixed mortgage at 5.5% with \$450 for taxes and insurance and 3% borrower down payment