



CITY ATTORNEY
CITY OF DURHAM

To: Members of City Council
Through: Kimberly Rehberg, City Attorney
From: Crista Cuccaro, Senior Assistant City Attorney and Sofia Hernandez, Senior Assistant City Attorney
Date: October 20, 2021
Subject: Analysis of Bull City Tenants United Recommendations

On October 12, 2021, City Council requested input from the City Attorney’s Office regarding Bull City Tenants United’s list of 13 recommendations for possible City ordinances to protect tenants. This chart analyzes the various recommendations by topic, and provides feedback about whether the recommendation is achievable at the local level.

Topic	Local Authority	State Legislation or Agency	Additional Considerations
<p>Improve inspections process <i>To include requiring mandatory inspections upon move-in</i></p> <p>(BCTU Proposal #1)</p>	<p>No. City cannot require mandatory inspections for rental units. State law allows a City to conduct periodic inspections only for “reasonable cause,” NCGS § 160D-1207(a), or as part of a targeted effort to address blight, in which City cannot discriminate between “types” of housing (e.g., single-family vs. multi-unit structures), NCGS § 160D-1207(b).</p>	<p>No authority per NCGS § 160D-1207, which provides that City cannot require regular, routine inspections, except regarding unsafe or hazardous structures.</p> <p>Possible preemption by the NC Landlord and Tenant Act, which controls where a lease states specific contractual requirements regarding inspections.</p>	<p>City cannot require specific terms between landlord and tenant, such as inspection schedules. City cannot interfere with individual’s private right to contract.</p> <p>City regularly conducts inspections of dwellings throughout the City. Per NCGS § 160D-1201, inspections are conducted in response to complaints of violations of the MHC. Periodic inspections based on reasonable cause per § 160D-1207 and § 160D-1117. Inspections may also occur under NCGS § 160D-1119 where structures are shown to be “especially dangerous to life.”</p>

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<p>Expand the Minimum Housing Code <i>To include requiring mold testing, carpet maintenance, programmable thermostats, and more</i></p> <p>(BCTU Proposal #2)</p>	<p>Yes, with respect to floor coverings. Floor coverings, such as carpets, could be more directly addressed in the Housing Code, but maintenance schedules cannot be required. Any specific carpet standards in Minimum Housing Code would apply to rental and owner-occupied housing.</p> <p>No, regarding programmable thermostats. City does not have authority to require programmable thermostats under Housing Code.</p>	<p>Possible preemption by the NC Landlord and Tenant Act, which controls where a lease states specific contractual requirements regarding inspections.</p> <p>Statewide bill (HB1012) was introduced in April 2019 that would establish statewide parameters and guidelines, landlords' responsibilities, and municipal authority to deal with fungal growth in dwellings. Referred to committee, but did not advance.</p>	<p><i>City has authority to and regularly does cite conditions regarding pests and moisture.</i></p> <p>City cannot require specific contract terms between landlord and tenant. City cannot interfere with individual's private right to contract.</p> <p>City Code Enforcement officials are not currently trained on mold remediation or testing; there are no Federal or State standards for mold training.</p> <p>No State or Federal regulations provide specific guidance on mold levels and toxicity.</p>

[Chart continues on next page.]

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<p>Prohibit collection of rent while in violation of Minimum Housing Code</p> <p>(BCTU Proposal #3)</p>	<p>No. There is no authority for this under state law.</p>	<p>Unclear what state law would need to be modified to allow for this authority, but could be Chapter 160D, Article 11, which is Building Code Enforcement.</p>	<p>It has been suggested that Charlotte has such a code provision. Section 11-45(e) of the Charlotte City Code reads as follows:</p> <p>“It shall be unlawful for the owner of a place of habitation that is imminently dangerous to health or safety to collect rent from another person who occupied the place of habitation at the time it became imminently dangerous to health or safety or to permit any other person to begin occupancy of such place of habitation. A place of habitation is imminently dangerous to health or safety if it is in violation of any one of the following minimum standards of fitness.”</p> <p>The Charlotte City Attorney’s Office does not view this provision as giving them the authority to prohibit a landlord from collecting rent on a dwelling that is in violation of code, but stated that the legal interpretation, enforcement, and effect of this provision is to keep a landlord from reletting a dwelling that has serious violations if a tenant moves out for whatever reason and to serve as the basis for emergency relocations of occupants of a dwelling that has severe code violations utilizing HUD funds. Charlotte does not prosecute for violation of this code provision and the code provision does not create a private right of action.</p>

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<p>Expand and reform use of Direct Repairs</p> <p>(BCTU Proposal #4)</p>	<p>Yes, probably (see additional considerations).</p>	<p>N/A</p>	<p>The City is authorized to support community development activities that include rehabilitation or preservation of private property for the benefit of low and moderate income individuals per NCGS § 160D-1311.</p> <p>Direct repairs would be permissible so long as the beneficiary is a low to moderate income individual or there is an element of preserving the housing as affordable—e.g., restrictive covenants limiting eligible homeowners. This would require a policy decision since such a program could reward irresponsible landlords.</p>
<p>Timely Repairs</p> <p><i>To include requirement that repairs be done by licensed contractors and that tenants can withhold rent</i></p> <p>(BCTU Proposal #5)</p>	<p>No. Under state law, cities can neither require licensed contractors for all repairs to a dwelling, nor authorize tenants to withhold rent.</p>	<p>Preemption by the NC Landlord and Tenant Act regarding withholding rent per NCGS § 42-44(c).</p> <p>Preemption by NC Building Codes, which provide the types of repairs that require licensed contractors and permits.</p>	<p>City cannot require specific terms for landlord/tenant or landlord/contractor agreements. City cannot interfere with individual’s private right to contract.</p>
<p>Regulate parking and towing covered by a lease</p> <p>(BCTU Proposal #6)</p>	<p>No. The City cannot interfere with or enforce private contracts.</p>	<p>Not likely that state law would need to be changed to allow enforcement of private contract rights.</p>	<p>Private contractual rights are enforced through civil action in the state’s courts.</p>

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<p>Clarify utility fees and increase landlord responsibility</p> <p>(BCTU Proposal #7)</p>	<p>City has authority to charge for water as utility.</p> <p>City cannot interfere with lease terms regarding other utility providers' fees.</p>	<p>Preemption under Landlord Tenant Act regarding lease terms (e.g. fees for garbage collection).</p> <p>Preemption under Landlord Tenant Act, NCGS § 42-42.1, that lessor may charge for cost of providing water, sewer, electricity, or natural gas.</p> <p>Preemption under authority of the NC Utilities Commission for submetering requirements.</p>	<p>City cannot require specific terms between landlord and tenant. City cannot interfere with individual's private right to contract.</p>
<p>Tenant Organizing</p> <p><i>To include right to form a tenant union and expand the state anti-retaliation statute</i></p> <p>(BCTU Proposal #8)</p>	<p>No. The City is preempted by state law with respect to protections for tenants in asserting their rights, reporting health and safety violations, organizing, and engaging in collective action, etc.</p>	<p>NCGS § 42-37.1(a)(5) protects tenants from retaliatory eviction for organizing around tenants' rights.</p>	<p>No state law prohibits individuals from forming tenant unions. State law explicitly protects tenants who engage in such activities. NCGS 42-37.1(a)(5)</p>
<p>Rent Control</p> <p><i>To include allowance for community-controlled social housing to establish rent controlled homes</i></p> <p>(BCTU Proposal #9)</p>	<p>No. The City is preempted by state law, except in certain circumstances.</p>	<p>NCGS § 42-14.1 prohibits local governments from imposing "rent control." However, there are allowances in the rent control statute for subsidized rental properties governed by an agreement and for ordinances or resolutions restricting rent for properties assisted with Community Development Block Grant (CDBG) funds.</p>	<p><i>The City regularly requires that developers or property owners declare restrictive covenants on property in exchange for public funding.</i> The City often imposes a thirty-year period of affordability, which means that during that period, the tenants eligible to occupy the property must be below certain income thresholds.</p>

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<p>Renovations for improvement, not displacement <i>To include requirement that tenant consent to building permit</i></p> <p>(BCTU Proposal #10)</p>	<p>No. Current City Ordinance, Chapter 10, Sec. 10-48 only requires that an owner or authorized agent of the owner participate in the permitting process.</p>	<p>NCGS § 160D-1110 governs issuance of a building permits under the NC Building Code. Neither NC Building Code nor State statutes require tenant signatures for permits.</p>	<p>While property owners have duty to provide habitable and safe housing, the law does not prevent property owner’s ability to make repairs or improvements to their property. Requiring that tenants sign off on permit applications poses serious concerns regarding land owners’ property rights.</p>
<p>Ban the Box/Second Chance</p> <p>(BCTU Proposal #11)</p>	<p>Likely. City may expand protected classes in the non-discrimination ordinance to include “justice-involved persons” or “persons with criminal history.”</p>	<p>N/A</p>	<p>Preliminary conversations with EEOC and HUD indicate that current or future funding from the federal agencies would not be jeopardized.</p>
<p>Ban Unenforceable Lease Terms/Fund Third-party Entity for Legal Review</p> <p>(BCTU Proposal #12)</p>	<p>No. The City cannot interfere with private contracts and is preempted by State law.</p>	<p>NCGS Chapter 42, the NC Landlord Tenant Act, includes the provisions applicable to residential tenants.</p>	<p>The City may be able to fund a third-party entity to provide legal review of leases. This use of funds is a policy decision to be made by City Council. In order to comply with state law, the service should be limited to low to moderate income tenants.</p>
<p>Tenant Notification of Zoning Changes</p> <p>(BCTU Proposal #13)</p>	<p>Yes</p>	<p>N/A</p>	<p>Pursuant to Section 3.2.5 of the Durham Unified Development Ordinance, signs are posted at property that is the subject of a zoning action at least 14 days in advance of the action. This gives nearby residents notice of the upcoming action. Additionally, mailed notice is required for property owners within 600 feet of many zoning decisions. However, there is no mechanism for notifying tenants by mail within the same radius.</p>

			The City may adopt notice requirements beyond what's required in State law. A solution could be to notify the residents within 600 feet, in addition to the property owners on file with the tax assessor's office.
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