



CITY ATTORNEY

CITY OF DURHAM

AFFORDABLE HOUSING AND THE LAW

Don O'Toole | November 10, 2022

Legal Framework

- Home Rule or Dillon's Rule?
- NC Courts will strictly construe municipal statutory authority

Applicable Statutory Authority

- Grant of Zoning Authority—N.C. Gen. Stat. 160D-702
- Rent Control Prohibition—N.C. Gen. Stat. 42-14.1
- Durham Charter Authority—Durham Charter Sec. 94.2

Cities may regulate the following through zoning (GS 160D-702):

- Height and size of buildings
- Percent of lot that may be occupied
- Size of yards (front, side, and rear)
- Density
- Use of buildings and land
- Street and utility ROW dedication
- Recreational space requirement



Inclusionary Zoning Authorized?

- What is it?
- Not included in the general zoning authorization found in GS 160D-702
- Statutory authority was specifically sought in 2001 through SB1001. The bill never made it out of committee.
- There is no statutory authority to engage in inclusionary zoning.

Rent Control Statute (GS 42-14.1)

A city may only control rents charged on residential or commercial properties if:

- The city has an ownership interest in the property; or
- The city is subsidizing the rents and has a contract with the owner;
or
- The property is subsidized with CDBG funds.

AH Charter Authority (Sec. 94.2)

The City of Durham is authorized to incentivize the development of AH by either providing:

- Density bonuses (*See* UDO Sec. 6.6); or
- Other incentives of value.

Note: the voluntary language used by the legislature.

Attorneys' Fee's Statute

GS 6-21.7:

- If a court finds that a city has violated a statute or case law setting unambiguous limits on its authority; then
- The Court shall award the other party its attorney's fees and costs.



Tools Available to the City

- Arms length contractual negotiations with developers (The Brannan, Foster on the Park, The Vega, 949 Washington St., City Centre)
- Development using City property and/or City money (Willard St. Apts., South Side)
- Voluntarily proffered development plan committed elements
- Statutory Development Agreements (Farrington AH—market rate density provided in exchange for 82 units of AH)
- Other “incentives of value” under the City’s Charter authority

