CHAPTER 370
HB 1400 - FINAL VERSION

28Mar2024... 0853h
05/22/2024 1962s
05/22/2024 2144s
13Jun2024... 2295CofC
13Jun2024... 2364EBA

2024 SESSION

24-2672
10/08

HOUSE BILL ***1400***

AN ACT relative to residential parking spaces, landlord-tenant law, unauthorized occupant evictions, and zoning procedures concerning residential housing.

SPONSORS: Rep. McWilliams, Merr. 30; Rep. Yokela, Rock. 32

COMMITTEE: Special Committee on Housing

AMENDED ANALYSIS

This bill:

I. Limits restrictions that municipalities may place on required residential parking spaces.

II. Defines the terms “tenant,” “subtenant,” “implied tenant,” and “non-rental owner,” and specifies the rights and obligations of each party in cases of evictions of unauthorized occupants.

III. Provides remedies for violations of landlord-tenant law and unauthorized occupancy evictions.

IV. Establishes a tax relief program for office conversion to residences; enables municipalities to allow its governing body to adopt certain zoning ordinance changes; and adds additional authority in zoning powers for parking requirements and lot size requirements related to sewer infrastructure.

- -

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 370
HB 1400 - FINAL VERSION

28Mar2024... 0853h
05/22/2024 1962s
05/22/2024 2144s
13Jun2024... 2295CofC
13Jun2024... 2364EBA

24-2672
10/08

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to residential parking spaces, landlord-tenant law, unauthorized occupant evictions, and zoning procedures concerning residential housing.

Be it Enacted by the Senate and House of Representatives in General Court convened:

370:1 New Paragraph; Zoning and Planning; Grant of Power; Parking. Amend RSA 674:16 by inserting after paragraph V the following new paragraph:

VI. In its exercise of the powers granted under this subdivision, the local legislative body of a city, town, or county in which there are located unincorporated towns or unorganized places may regulate accessory parking for vehicles, but shall not require more than 1.5 residential parking spaces per unit for studio and one bedroom units under 1000 square feet that meet the requirements for workforce housing under RSA 674:58, IV, and shall not require more than 1.5 residential parking spaces per unit for multi-family developments of 10 units or more.

370:2 Definition. Amend RSA 540-A:1, II to read as follows:

II. "Tenant" means a person to whom a landlord rents or leases residential premises, including manufactured housing or a space in a manufactured housing park.

(a) "Subtenant" means a person to whom a tenant rents or leases residential premises, including manufactured housing or a space in a manufactured housing park, if the tenant has authorization from the landlord to sublet.

(b) "Implied tenant" means a person who occupies a dwelling unit with:

(1) The knowledge and consent of the lawful tenant; and

(2) The knowledge and consent of the landlord, but without a signed lease or rental agreement.

II-a. Nothing in this section shall be construed to prevent the arrest and prosecution of a person or persons, pursuant to RSA 635:1 or RSA 635:2.

370:3 New Paragraph; Definition. Amend RSA 540-A:1 by inserting after paragraph III the following new paragraph:

IV. "Non-rental owner" means an owner or owner's agent who does not rent or lease their property to others.

370:4 Certain Specific Acts Prohibited. Amend RSA 540-A:3, VII-VIII to read as follows:

VII. Other than residential real estate under ***RSA 540-A:4, VII(c) or*** RSA 540-B, a landlord shall maintain and exercise reasonable care in the storage of the personal property of a tenant who has vacated the premises, either voluntarily or by eviction, for a period of 7 days after the date upon which such tenant has vacated. During this period, the tenant shall be allowed to recover personal property

without payment of rent or storage fees. After the 7-day limit has expired, such personal property may be disposed of by the landlord without notice to the tenant.

VIII. Prior to collecting any fee as part of the rental application or renewal process, the landlord shall clearly disclose, in writing to prospective tenants, the amount of the fee and the requirement for a satisfactory criminal background and credit check, if any. If such fee is collected from an applicant, but the unit is not rented to that applicant, the landlord shall return any amount beyond the actual cost of the documented background check, credit check, and/or reasonable administrative costs to the applicant within 30 days of receipt. Nothing in this paragraph shall require the landlord to conduct a criminal background or credit check or prohibit the landlord from renting to an applicant who does not pass the criminal background or credit check.

IX. No person or legal entity, that is not a tenant, subtenant, or implied tenant, as defined in RSA 540-A:1, II, shall occupy residential real estate without permission of the owner, landlord, or their agent.

370:5 Remedies. Amend RSA 540-A:4, II to read as follows:

II. Any tenant or landlord [~~may~~] *or non-rental owner shall have the right to* seek relief from a violation of RSA 540-A:2 or RSA 540-A:3 by filing a petition in the district or county where the rental premises are located.

II-a. Nothing in this section shall be construed to extinguish any common law remedies, including self-help, available to a non-rental owner.

370:6 Remedies. Amend RSA 540-A:4, VI - VII to read as follows:

VI. The court shall hold a hearing within 30 days of the filing of a petition under paragraph II or within 10 days of service of process upon the defendant, whichever occurs later. *In cases in which a landlord or non-rental owner alleges a violation of RSA 540:3, IX, a hearing shall be held within 48 hours, provided that service of the petition was made at the abode or in hand on the day the court entered the petition. If the return of service does not show same day service, the hearing shall be held within 48 hours from the date of service. The court may continue the hearing at the request of the plaintiff, or for compelling necessity established by the defendant. If the property is the personal residence of a non-rental owner, and the defendant requests a continuance, upon granting such a continuance, the court shall issue temporary orders requiring the defendant to vacate or be removed from the real estate pending the hearing on the merits. The court shall make its best efforts to render a decision on the matter the same day as of the hearing on the merits.*

VII. Upon a showing of a violation of RSA 540-A:2 or RSA 540-A:3, I, II, or III, the court shall grant such relief as is necessary to protect the rights of the parties. Such relief may include:

(a) An order prohibiting the defendant from continuing the activity or activities which violate RSA 540-A:2 or RSA 540-A:3; and

(b) An award of damages to the plaintiff for the violations of RSA 540-A, breach of warranty of habitability, breach of the covenant of quiet enjoyment or any other claim arising out of the facts alleged in the plaintiff's petition.

(c) For purposes of RSA 540-A:3, IX:

(1) When the defendant claims to be a subtenant or an implied tenant, the defendant shall bear the burden of proof to establish such status. Evidence to prove tenancy may include, but is not limited to:

(A) An unexpired written lease signed and dated by the tenant and landlord or the tenant and landlord's agent;

(B) A copy of canceled checks or money orders dated within one month of date-of-offer of such proof, indicating it was paid to the landlord or landlord's agent and which was made by, or on behalf of, the tenant;

(C) A copy of cash rent receipts dated within one month of date-of-offer of such proof, that was signed and dated by the landlord or landlord's agent;

(D) Written proof of rent payment made within one month of date-of-offer of such proof from Venmo, ACH payment, EFT payment, or other electronic direct payment methods to the account of the landlord or landlord's agent; or

(E) Copy of emails, texts, or other electronic messages which when taken together establish an agreement between the landlord or landlord's agent that the occupant may reside at the premises.

(2) This subparagraph shall not be construed to prevent an occupant claiming to be an implied tenant from presenting evidence in support of their claim that based on the totality of the circumstances the landlord, landlord's agent, or non-rental owner impliedly agreed to allow the occupant to reside at the premises.

(3) By itself, evidence of utilities, other services, IDs, or documents showing the address of the residence shall not be sufficient evidence without authorizing documentation from the lessor or the non-rental owner.

(4) In all cases if the court rules in favor of the plaintiff, the court shall order the immediate removal of the unauthorized occupants by law enforcement and the plaintiff shall be awarded actual damages or $1000, whichever is greater.

(5) If the court finds that the occupant sublet from the tenant but the lease between the landlord and the tenant prohibits subletting, and the occupant failed to establish being an implied tenant, the plaintiff may dispose of any remaining personal property as they see fit after 48-hours notice to the occupants. Notwithstanding RSA 540-A:4, VII(c)(4), in such cases damages shall not be awarded to the plaintiff.

(6) In all other cases of non-rental property and rental property, plaintiff may dispose of any remaining personal property as they see fit and without notice to the occupants and occupants may be arrested for trespass.

(7) If the court rules in favor of the occupants, then the occupants shall not be removed from the premises. Such ruling shall be without prejudice to any subsequent possessory action filed pursuant to RSA 540.

370:7 New Subparagraph; Remedies. Amend RSA 540-A:4, IX by inserting after subparagraph (f) the following new subparagraph:

(g) If the court finds that the plaintiff's allegation of a violation of RSA 540-A:3, IX was not made in good faith, the defendant shall be awarded actual damages or $1000 whichever is greater.

370:8 Community Revitalization Tax Relief Incentive; Tax Relief. Amend RSA 79-E:2, VI(a) to read as follows:

(a) For a qualifying structure, that for a period of time determined by a local governing body in accordance with this chapter, the property tax on a qualifying structure shall not increase as a result of the substantial rehabilitation thereof ***or conversion from office, industrial, or commercial use to residential use***.

370:9 New Section; Community Revitalization Tax Relief Incentive; Office Conversion Zones Added. Amend RSA 79-E by inserting after section 4-c the following new section:

79-E:4-d Office Conversion Zones.

I. A city or town may adopt the provisions of this section by vote of its legislative body, according to the procedures described in RSA 79-E:3, to establish tax relief for the owners of a building or structure currently being used for office use, in whole or in part, if such use is converted to residential use, in whole or in part.

II. The governing body of a municipality shall designate the area of office use in which the tax relief for qualifying structures shall apply. Municipalities may further establish criteria for the public benefits, goals, and measures that will determine the eligibility of qualifying structures for tax relief located within a designated office conversion zone. For the purposes of this section, "office use" means buildings or structures used or intended for use in whole or in part for the practice of a profession, the carrying on of a business or occupation or the conduct of a non-profit organization or government entity. "Office use" also includes co-working spaces.

III. Municipalities may grant tax relief to the qualifying structure and property as described in RSA 79-E:4 for the period of tax relief under RSA 79-E:5, provided that no property may be granted tax relief under this chapter more than once in a 20 year period.

370:10 New Subparagraph; Definition of Qualifying Structure. Amend RSA 79-E:2, II by inserting after subparagraph (f) the following new subparagraph:

(g) In a city or town that has adopted the provisions of RSA 79-E:4-d, "qualifying structure" also means a building or structure being used for office use, in whole or in part, if such use is converted to residential use, in whole or in part, in an office conversion zone established under RSA 79-E:4-d. Nothing in this section shall affect the governing or legislative body's existing consultation process with the planning board.

370:11 Zoning; Words Defined; Local Legislative Body. Amend RSA 672:8 to read as follows:

672:8 Local Legislative Body.

I. "Local legislative body" means one of the following basic forms of government utilized by a municipality:

[~~I.~~] ***(a)*** Council, whether city or town;

[~~II.~~] ***(b)*** Mayor-council;

[~~III.~~] ***(c)*** Mayor-board of aldermen;

[~~IV.~~] *(d)* Village district or precinct;

[~~V.~~] *(e)* Town meeting; or

[~~VI.~~] *(f)* County convention.

II. In non-charter towns, village districts, and counties in which there are located unincorporated places that have adopted the authority provided in RSA 674:18-a for the approval of amendments to zoning ordinances or bylaws and the local zoning map, the term "local legislative body" shall mean local governing body as defined in RSA 672:6 solely for the purpose of adopting amendments to a zoning ordinance or local zoning map.

370:12 New Section; Adoption of Zoning Ordinances; Alternative Procedure. Amend RSA 674 by inserting after section 18 the following new section:

674:18-a Alternative Procedure for Adoption of Zoning Ordinances.

I. Any non-charter town, village district, or county in which are located unincorporated places, may adopt the provisions of this section by placing the question on the warrant of a special or annual meeting, by the governing body or by petition pursuant to RSA 39:3, or otherwise by acting upon the question of adoption of this section in accordance with its normal procedures for passage of ordinances.

II. Upon adoption, the local governing body shall be authorized to adopt amendments to the local zoning ordinances and the local zoning map by majority vote of the governing body after at least one full public hearing that complies with RSA 675:7, without a vote by the usual local legislative body or by a vote of voters in the jurisdiction.

III. The procedure for adoption of amendments to zoning ordinances or bylaws and the zoning map under this section shall be construed to be an adoption by the local legislative body as defined in RSA 672:8.

370:13 New Section; Local Land Use and Regulatory Powers; On-site Parking Requirements. Amend RSA 674 by inserting after section 16 the following new section:

674:16-a On-site Parking Requirements.

I. In this section:

(a) “Residential use” means lands, buildings, or structures, or portions thereof, used, designed, or intended for non-transient occupancy.

(b) “On-site parking requirements” means the required number of on-site parking spaces, the maximum distance of the parking spaces from the proposed use, the dimensions of the parking spaces, the angle of the parking spaces, and the hours of the day the parking spaces must be available as required by a zoning ordinance, site plan review regulation, subdivision regulation, or innovative land use control.

(c) “Alternative parking solution” means a proposal by an applicant to meet the parking demand created by a proposed residential use which is a substitute for meeting the on-site parking requirements prescribed by a zoning ordinance, site plan review regulation, subdivision regulation, or innovative land use control. Alternative parking solutions shall include, but not be limited to: (1) an agreement for the provision of off-site parking spaces with another owner of real property during hours which the off-site parking spaces are not in use within a quarter of a mile of the proposed residential use,

(2) agreement with a rideshare company to provide transportation to the occupants of the proposed residential use, (3) availability of public transportation including fixed-route bus service within a quarter of a mile of the proposed residential use, or (4) location in a district officially designated in a municipality's master plan, or by zoning ordinance, as a downtown, town center, central business district, or village center in which there is adequate walkability infrastructure. The planning board shall not be required to approve the alternative parking solution if the results of the third-party review under RSA 676:4-b, I, conclude that the proposed alternative parking solution will not meet the parking demand created by the proposed residential use. Planning boards shall have the authority under RSA 674:16-a to approve residential uses with alternative parking solutions which may be inconsistent with the requirements of their zoning ordinance.

(d) "Adequate walkability infrastructure" means sidewalks, density of development, bus stops, bike lanes, mixed use neighborhoods, and other infrastructure that supports walkability.

II. If a proposed residential use proposes to meet the on-site parking requirements prescribed by a zoning ordinance adopted pursuant to RSA 674:16, prescribed by a site plan review regulation adopted pursuant to RSA 674:44, prescribed by a subdivision regulation adopted pursuant to RSA 674:36, or other innovative land use control adopted pursuant to RSA 674:21, with an alternative parking solution, in any of the above cases due to economic considerations, the planning board shall be required to consider such alternative parking solution.

III. If the applicant can demonstrate that the alternative parking solution will meet the parking demand created by the proposed residential use, a planning board shall be required to approve the alternative parking solution proposed by the applicant as a substitute for the proposed residential use meeting the on-site parking requirements.

IV. If a planning board during the review process of a subdivision plat, site plan, or other land use application for the proposed residential use doesn't agree with the applicant's determination that the alternative parking solution will meet the parking demand created by the proposed residential use, the planning board can request third-party review under RSA 676:4-b, I.

370:14 Repeal. RSA 79-E:4-d, relative to office conversion zones, is repealed.

370:15 Effective Date.

I. Sections 1 through 7 shall take effect January 1, 2025.

II. Section 14 of this act shall take effect January 1, 2035.

III. The remainder of this act shall take effect July 1, 2024.

Approved: August 23, 2024
Effective Date:
I. Sections 1-7 effective January 1, 2025
II. Section 14 effective January 1, 2035
III. Remainder effective July 1, 2024