

New Hampshire Housing Codes

Healthy Homes Provisions

I. Summary

The State of New Hampshire's Housing Standards statute (Act) empowers local governments to establish and enforce minimum housing standards. Title III, Chapter 48-A:2.

In municipalities with such ordinances, the Act prohibits a landlord from renting or leasing a residential dwelling with any of the following conditions:

1. The premises are infested by insects and rodents where the landlord is not conducting a periodic inspection and eradication program;
2. There is defective internal plumbing or a back-up of sewage caused by a faulty septic or sewage system;
3. There are exposed wires, improper connectors, defective switches or outlets or other conditions which create a danger of electrical shock or fire;
4. The roof or walls leak consistently;
5. The plaster is falling or has fallen from the walls or ceilings;
6. The floors, walls or ceilings contain substantial holes that seriously reduce their function or render them dangerous to the inhabitants;
7. The porches, stairs or railings are not structurally sound;
8. There is an accumulation of garbage or rubbish in common areas due to the landlord's failure to remove or provide a sufficient number of receptacles for storage prior to removal (unless the tenant has agreed to be responsible for such removal and the landlord has removed all garbage at the beginning of the tenancy);
9. There is an inadequate supply of water or whatever equipment that is available to heat water is not properly operating;
10. There are leaks in any gas lines or leaks or defective pilot lights in any appliances furnished by the landlord; or
11. The premises do not have heating facilities capable of heating rooms -- or actually maintaining a temperature of -- at least 65 degrees F on average.

See id. § 48-A:14.

The municipality's code must empower an agency to determine a dwelling is "unfit for human habitation" if conditions exist which are "unreasonably dangerous or injurious to the health or safety of the occupants," such as "lack of reasonable adequate ventilation . . . disrepair . . . uncleanliness . . . or any violation of other health, fire or safety regulations." Id. § 48-A:7. Furthermore, the code must empower local authorities to order "repair, alteration or improvement" of an "unfit" building, provided such work "can be made at a reasonable cost in relation to the value of the dwelling and the ability of the owner to assume such cost." Id. § 48-A-3 (II)-(III).

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II. The Housing Standards Law¹

TITLE III. TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 48-A. HOUSING STANDARDS

§ 48-A:1 - Definitions.

The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

- I. "Municipality" shall mean any city or town in this state.
- II. "Governing body" shall mean, in a city, that governing body which is designated as such by the charter of the particular city; in a town, the town meeting.
- III. "Dwelling" shall mean any building, structure, trailer, mobil-home or camp or part thereof, used and occupied for human habitation or intended to be so used and includes any appurtenances belonging thereto or usually enjoyed therewith.
- IV. "Public agency" shall be a board, department, officer, or employee of a municipality, designated by ordinance, code or bylaw to exercise the powers and perform the duties conferred upon it by this chapter.

§ 48-A:2 - Grant of Power.

Whenever the governing body of any municipality finds that there exists in such municipality dwellings which are unfit for human habitation due to dilapidation, dangerous defects which are likely to result in fire, accidents, or other calamities, unhealthful lack of ventilation or sanitary facilities, or due to other unhealthy or hazardous or dilapidated conditions, including those set forth in RSA 48-A:7, power is hereby conferred upon such municipality to adopt ordinances, codes, or bylaws to cause the repair, closing, or demolition or removal of such dwellings in the manner provided in this chapter. Any municipality which adopts such a code or ordinance which has provisions for appeal, pursuant to this chapter, shall be exempt from any provisions of RSA 48-A which are in conflict with the adopted ordinance.

§ 48-A:3 - Provisions of Ordinances, Codes and Bylaws.

Such ordinances, codes and bylaws shall include the following provisions:

- I. That a public agency is established, consisting of such one of the following as the governing body, at its option; shall expressly provide in such ordinance, code, or bylaw:
 - (a) A board consisting of at least 3 members 2 of whom shall be the head of the municipal health department, and the head of the municipal fire department, if such offices exist, and such other incumbents of municipal offices or positions as such ordinance, code, or bylaw shall prescribe. Selectmen, and city and town managers, and members of the governing bodies of cities shall be ineligible for membership on such board. No person shall serve concurrently as a member of such board and as a member of the appointing authority.

¹ Source: www.gencourt.state.nh.us/rsa/html/indexes/search.html - and query: "housing standards"
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- (b) A minimum housing standards enforcement officer, under such title as the governing body shall prescribe, who shall be qualified by training or experience to interpret, administer, and enforce the provisions of such ordinance, code or bylaw, which shall be his principal duty and responsibility.
 - (c) Any other qualified department, officer or employee of the municipality as the governing body shall designate, other than an elected officeholder, city or town manager, or member of the housing board of appeals hereinafter provided; the department, officer or employee so designated may perform the duties of the public agency in addition to his other duties, with or without additional compensation, as the governing body shall determine.
- II. That whenever a petition is filed with the public agency by at least 10 residents of the municipality charging that any dwelling is unfit for human habitation or whenever it appears to the public agency by inspection that any dwelling is unfit for human habitation, it shall, if preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner, every mortgagee of record and all parties in interest in such dwelling (including persons in possession) a complaint stating the charges in that respect. If the person to be served resides outside the state, service may be made upon him by registered mail; and if there are any unascertained persons having an interest in said dwelling, notice may be given them by publication in a newspaper having general circulation in the municipality, such publication to be at least 10 days before the date set for the hearing. Such complaint shall contain a notice that a hearing will be held before the public agency at a place therein fixed not less than 10 days nor more than 30 days after the serving of said complaint; that the owner, mortgagee and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before such public agency.
- III. That if, after such notice and hearing, the public agency determines according to the standards of the ordinance, code or bylaw that the dwelling under consideration is unfit for human habitation it shall state in writing its findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order which, if the repair, alteration or improvement of the said dwelling can be made at a reasonable cost in relation to the value of the dwelling and the ability of the owner to assume such cost, requires the owner, within the time specified in the order, to repair, alter, or improve such dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or if the repair, alteration or improvement of the said dwelling cannot be made at a reasonable cost in relation to the value of the dwelling and the ability of the owner to assume such cost, requires the owner, within the time specified in the order, to remove or demolish such dwelling.
- IV. If an owner is aggrieved by an order of the public agency made pursuant to paragraph III hereof, he may appeal to the city council or mayor and board of aldermen in the case of cities, or to the board of selectmen in the case of towns. Said city council or mayor and board of aldermen or board of selectmen shall hold a public hearing upon said appeal, due notice of said hearing having first been given to the public agency and to the owner. The city council

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or mayor and board of aldermen or board of selectmen may affirm or revoke the order of the public agency, or they may modify the same in accordance with their findings. If they shall affirm or modify such order, the public agency shall proceed to enforce said order as affirmed or so modified, in the manner prescribed in RSA 48-A:4. If the city council or mayor and board of aldermen or board of selectmen shall revoke said order, the proceedings shall be terminated.

§ 48-A:4 Procedure for Enforcement.

If the owner fails to comply with an order, made pursuant to the provisions of RSA 48-A:3, to repair, alter, improve or to vacate and close the dwelling, or to remove or demolish the dwelling, the public agency may file a petition in the superior court in which it shall set forth the charges issued pursuant to RSA 48-A:3, II, as well as any other allegations bearing upon the unfitness of the dwelling for human habitation. The court shall thereupon direct notice to be given all parties having an interest in said dwelling, including mortgagees and persons in possession thereof. Such notice shall be given, where practicable, by personal service, except that if the person to be served resides outside the state, service may be made upon him by registered mail; and if there are any unascertained persons having an interest in said dwelling, notice may be given them by publication of the petition in a newspaper having general circulation in the municipality, such publication to be at least 10 days before the date set for the hearing. The court shall set a date for hearing such charges and additional allegations. Upon hearing, the matter shall be treated as de novo, and the court shall hear such pertinent evidence concerning the fitness of the dwelling for human habitation as may be relevant.

§ 48-A:5 Order of the Court.

The court shall as soon as practicable issue its order upon said petition; and if the court finds the dwelling complained against is unfit for human habitation due to any of the causes or conditions enumerated in RSA 48-A:2, such order shall direct the public agency to repair, alter, or improve such dwelling to render it fit for human habitation if such repair, alteration or improvement can be made at a reasonable cost in relation to the value of the dwelling and the ability of the owner to assume such cost; or if the repair, alteration or improvement of said dwelling cannot be made at a reasonable cost in relation to the value of the dwelling and the ability of the owner to assume such cost, to remove or demolish such dwelling. If the court shall find in favor of the owner, it shall award to him his reasonable costs and expenses, including counsel fees, all as determined by the court, incurred by him in his defense of the action in the superior court.

§ 48-A:6 Lien.

Whenever the public agency shall incur cost for the repair, alteration, improvement, vacating or closing, or for the removal or demolition of a dwelling, pursuant to an order of the superior court, the amount of such costs shall be a lien against the real property as to which such cost was incurred and such lien, including as part thereof upon allowance of his costs and necessary attorneys' fees, may be foreclosed upon order of the superior court made pursuant to a petition for that purpose filed in said court. Such lien shall be subordinate to mortgages of record made before the institution of proceedings under this chapter. Notice of said lien shall be filed with the register of deeds for the county in which the real estate is situated, and shall be recorded by him. If the dwelling is demolished by the public agency, he shall sell the materials of such dwelling

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and pay the proceeds of such sale over to the superior court, for distribution to such persons as the court shall find entitled thereto.

§ 48-A:7 Standards for Public Agency.

An ordinance, code or bylaw adopted by a municipality pursuant hereto shall provide that the public agency may determine that a dwelling is unfit for human habitation if he finds that conditions exist in such dwelling which are unusually, abnormally, or unreasonably dangerous or injurious to the health or safety of the occupants of such dwelling, the occupants of neighboring dwellings or other residents of such municipality. Such conditions may include the following: Defects which increase beyond normal the hazards of fire, accident, or other calamities; lack of reasonable adequate ventilation, light, or sanitary facilities; dilapidation; disrepair, dangerous structural defects; uncleanliness; over-crowding; inadequate ingress and egress; inadequate drainage; or any violation of other health, fire or safety regulations.

§ 48-A:8 Additional Provisions of Ordinances, Codes, or Bylaws.

An ordinance, code or bylaw adopted by the governing body of the municipality may authorize the public agency and its delegated officers to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter including the following powers in addition to others herein granted:

- I. To investigate the dwelling conditions in the municipality in order to determine which dwellings therein are unfit for human habitation;
- II. To administer affirmations, examine witnesses and receive evidence;
- III. To enter upon premises for the purpose of making examinations, provided that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an administrative inspection warrant under RSA 595-B for this purpose from a court of competent jurisdiction in the event entry is denied or resisted;
- IV. To appoint and fix the duties of such officers, agents and employees as deemed necessary to carry out the purposes of such ordinance, code or bylaw; and
- V. To delegate any of its functions under such ordinance to such officers as it may designate.

§ 48-A:9 No Abrogation of Other Powers of Municipalities.

Nothing herein shall be construed to abrogate or impair the powers of the courts or of any governing body, city council, or department of any municipality to enforce any provisions of its charter or its ordinances or regulations nor to prevent or punish violations thereof; and the powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

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§ 48-A:10 No Abrogation of Powers of Municipalities as to Nuisances.

Nothing in this chapter shall be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

§ 48-A:11 Minimum Standards; Barring the Use or Occupancy; Violations and Punishment.

Any municipality may (by ordinance adopted by its governing body):

- I. Prescribe minimum standards for the use and occupancy of dwellings throughout the municipality;
- II. Prevent the use or occupancy of any dwelling which is injurious to the public health, safety, or welfare.

§ 48-A:12 Exceptions.

An ordinance, code or bylaw adopted pursuant to the authority of this chapter may provide that any dwelling, building or structure situated within an historic district that is established under RSA 31:89-b, or within such other classes of dwellings, building or structure as the governing body shall determine to have special significance to the public interest and shall expressly define in such ordinance, code or bylaw, may be approved by the board of aldermen as a special exception, after public hearing, and the provisions of such ordinance, code or bylaw may be waived in their application to such dwelling, building or structure, in whole or in part or otherwise so modified as the housing board of appeals may determine.

§ 48-A:13 Conflicting Provisions.

Whenever the regulations made under the authority hereof differ from those prescribed by any statute, ordinance or other regulation, that provision which imposes the higher standard shall govern.

§ 48-A:14 Minimum Standards Established.

No landlord, as defined by RSA 540-A:1, I, renting or leasing a residential dwelling in a municipality which has not adopted ordinances, codes or bylaws pursuant to this chapter shall maintain those rented premises in a condition in which:

- I. The premises are infested by insects and rodents where the landlord is not conducting a periodic inspection and eradication program;
- II. There is defective internal plumbing or a back-up of sewage caused by a faulty septic or sewage system;
- III. There are exposed wires, improper connectors, defective switches or outlets or other conditions which create a danger of electrical shock or fire;
- IV. The roof or walls leak consistently;
- V. The plaster is falling or has fallen from the walls or ceilings;
- VI. The floors, walls or ceilings contain substantial holes that seriously reduce their function or render them dangerous to the inhabitants;
- VII. The porches, stairs or railings are not structurally sound;
- VIII. There is an accumulation of garbage or rubbish in common areas resulting from the failure of the landlord to remove or provide a sufficient number of receptacles for storage prior to

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- removal unless the tenant has agreed to be responsible for removal under the rental agreement and the landlord has removed all garbage at the beginning of the tenancy;
- IX. There is an inadequate supply of water or whatever equipment that is available to heat water is not properly operating;
 - X. There are leaks in any gas lines or leaks or defective pilot lights in any appliances furnished by the landlord; or
 - XI. The premises do not have heating facilities that are properly installed, safely maintained and in good working condition, or are not capable of safely and adequately heating all habitable rooms, bathrooms and toilet rooms located therein, to a temperature of at least an average of 65 degrees F.; or, when the landlord supplies heat in consideration for the rent, the premises are not actually maintained at a minimum average room temperature of 65 degrees F. in all habitable rooms.

§ 48-A:15 Enforcement of Minimum Standards.

In municipalities which have not established a public agency as described in RSA 48-A:3, a violation of the minimum standards set forth in RSA 48-A:14 shall be a violation, and each continuing day of violation after notice shall be a separate offense.

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