

ATTACHMENT A

**A RESOLUTION ACCEPTING THE REPORT ON
TENANTS' BILL OF RIGHTS
AND LANDLORD LICENSING
Resolution No. 22/2003-04**

WHEREAS, the Carrboro Board of Aldermen seeks to ensure that its existing and proposed policies and regulations are responsive to community needs; and

NOW, THEREFORE BE IT RESOLVED by the Carrboro Board of Aldermen that the Aldermen accepts this report and expresses its intent to consider including Updating the Housing Code as a project in the 2004 Action Agenda.

This is the 16th day of September in the year 2003.

MEMORANDUM

To: Carrboro Mayor and Board of Aldermen

From: Michael B. Brough and T.C. Morphis *MBB. TM*

Subject: Landlord Licensing Program

Date: September 8, 2003

The purpose of this memo is to discuss the results of the research our office has done into the possible adoption of an ordinance licensing landlords and/or an ordinance establishing a "Tenant's Bill of Rights."

T. C. Morphis, an attorney in my office, reviewed the programs in five north Carolina Municipalities dealing with the regulation of landlords: Chapel Hill, Asheville, Greensboro, Monroe, and Morganton. A brief description of each of these programs is included in Appendix A to this memorandum, and copies of the various ordinances are available through our office for any Board member who wishes to review them.

In reviewing these programs, it is apparent that two different approaches are being used. Chapel Hill has adopted a licensing program, and the other four municipalities have adopted certification programs. The difference is that, under a certification program, certificates are issued to rental units that meet local minimum housing code standards, while under a licensing program, licenses are issued to landlords who comply with certain requirements, including (in Chapel Hill's program) a requirement that the landlords certify that their rental units comply with the town's minimum housing code.

In every case, except Chapel Hill's, the municipalities included regular, mandatory inspections in their licensing programs. The four municipalities with regular inspections programs all felt that regular inspections are the only way to effectively enforce the local minimum housing code. The frequency of required inspections varies from once every three years to once every five years. The City of Monroe also requires an inspection after a rental unit has turned over to new tenants three times.

The downside to required regular inspections is that they involve significant staff resources. All five municipalities had high start up costs to implement their programs. Each of the four municipalities, regardless of size, that implemented regular inspections had to hire more staff or dedicate existing staff to cover the inspection program, which translates into higher long-term costs. Morganton – the municipality closest in size to Carrboro – had to hire an additional inspector, and now he and the three existing inspectors cover all the duties of the inspections department. Also, the Morganton inspections department secretary now spends most of her time coordinating the program. Monroe – a city slightly larger than Carrboro – also requires four staff to run their inspection program. Greensboro, which is by far the largest city of the five studied, requires nine staff to run their inspection program and other department functions. In contrast to these municipalities, Chapel Hill, whose program does not have a regular

inspections component, had to hire only one new inspector and an administrative clerk to run its program. Moreover, Chapel Hill only adopted the licensing ordinance last year, and the Town anticipates that its costs to run the program will drop once the landlord database has been established.

Chapel Hill's main concern was identifying rental properties, not enhancing its current inspection program. As indicated above, the program requires owners of covered rental property to register with the town and then certify that their property complies with the minimum housing code. Chapel Hill will only institute an inspection if it becomes necessary. Landlords that only own vacation homes, second homes for their student children and accessory apartments that are not commercially rented are also required to register, but they may fill out a disclaimer form exempting them from the licensing system. Chapel Hill uses the database of rental units generated by the program to know where rental units in town are. Though not yet available, Chapel Hill plans to eventually have the rental properties database available through its public access GIS system.

With respect to an ordinance establishing the rights and obligations of landlords and tenants, the statutory authority to do so is dubious, and we were unable to find any North Carolina municipalities that have taken this approach. State law already governs most aspects of the landlord-tenant relationship (Chapter 42, "Landlord and Tenant"), including residential rental agreements, landlord obligations to provide fit premises, security deposits, and summary ejectment procedures. In addition, federal law provides protections against discrimination on various grounds. While it does not appear open to local governments to supplement this law by the enactment of ordinances, some local governments have published summaries of what the existing law is. For example, the City of Salisbury has prepared an elaborate, 31 page "Tenant and Landlord Handbook" that deals with the entire rental relationship from signing a lease to moving out. A copy of the Table of Contents of this publication is attached as Appendix B. Chapel Hill has also produced a 14 page "Rental Duties Information Sheet" that deals with the obligations of landlords and tenants and summarizes relevant ordinances dealing with noise, garbage, and occupancy limits. Finally, a summary of the legal responsibilities of landlords and tenants is also distributed by UNC's Student Legal Services (Appendix C).

We would be happy to answer any questions the Board may have or provide additional information.

Appendix A: Descriptions of Existing Programs

Chapel Hill: Chapel Hill uses a landlord licensing program, with authority for the program based on the minimum housing code statutes. The town enacted the program because of concerns that poorly maintained rental properties could adversely affect residential neighborhoods. Now the landlord license database provides a way of locating where most rental properties in town are.

Enacted in April of 2000, landlords had until January 1, 2003 to register with the Town. Every owner of rental property must register, but landlords that only own vacation homes, second homes for student children and accessory apartments that are not commercially rented may fill out a disclaimer form exempting them from the licensing system. Unlike most of the other North Carolina programs, the Chapel Hill system has no mandatory inspection component. Landlords are required to certify that their rental units meet the Chapel Hill minimum housing code, but an inspection is not required before a license will be issued. Instead, Chapel Hill uses the database of rental units generated by the program to know where rental units in town are. Though not yet available, Chapel Hill plans to eventually have the rental properties database available on its public access GIS system. Chapel Hill's program only requires one inspector and an administrative clerk to run.

The inspection provisions for the program have been taken nearly verbatim from the language of the North Carolina minimum housing code statutes. I spoke with Ms. Maggie Bowers and Mr. Thomas Cummings, both in the Inspections Department, about the program.

Asheville: Asheville uses a certification program, and the minimum housing code statutes are the primary statutory authority. The city originally issued certificates to the owner of a rental property, but after landlords began missing their required inspections, the city switched to issuing certificates for specific properties, irrespective of who the current landlord is. Enacted in 1993, landlords were only asked to voluntarily comply with the program until 1999. After 1999, landlords that did not have certificates for their properties could be fined. Today the city has about a 90% compliance rate. To obtain a certificate, a landlord must have his properties inspected every five years or before a new occupant moves in. The city housing code provides for exemptions in some cases, and it requires that only a certain portion of units in multiunit developments must be inspected every five years.

The most innovative feature of the Asheville program is that it requires that the inspections be done through private home inspectors. To insure that all inspectors are qualified, the city limits the pool of eligible inspection companies to fifteen and requires that each inspector go through a training workshop. The certification inspections are less thorough than ordinary home inspections and typically cost between \$125 and \$150. After it was discovered that this system had created an artificial monopoly – landlords were asking only those inspectors who could do certification inspections to do the ordinary home inspections as well – the city began requiring that certification inspections

and ordinary home inspections must be separated by six months. Asheville only has an inspection staff of two or three, but Mr. Jeff Baker, the staff person I spoke with, said that once the system was established that would be enough.

Greensboro: Greensboro uses a certification program, with the minimum housing code statutes as the main statutory authority. The city has adopted the 2000 *International Property Maintenance Code* as its minimum housing code. This code is published by the International Code Council.

The Greensboro ordinance was just enacted this past March and will not become effective until January 1, 2004. From that date, landlords will have three and a half years to report their rental properties, with one housing certificate being issued for each rental unit. Certificates are free. Once issued, a certificate is good for five years, provided there are no complaints lodged with the city about the property. If, after a complaint has been made, the city finds a rental unit is not in compliance, the landlord loses the certificate for that unit and must make the necessary repairs along with paying \$250 to get it back.

Greensboro has keyed its certification program to regular inspections made by city staff. A city building inspector must inspect existing units before certificates will be issued. For new units, a certificate will be issued automatically when the certificate of occupancy has been issued. Thereafter units must be inspected each time a certificate must be renewed. All inspections are free. Unlike smaller municipalities with licensing-certificate programs, Greensboro has nine building inspectors (including the supervisor) who do nothing but inspect rental and owner-occupied properties. The supervisor believes that number of staff will be enough to cover all building inspection duties. I spoke with Mr. Danny Nall in Building Inspections about the program.

Monroe: Monroe has a certification program, with basic authority for the program being based on the business license statute and general police power statute. Though not explicitly stated, the program's inspections provisions also dovetail with the city's minimum housing code. The program requires an annually renewed certificate for each rental unit. Inspections must be done before a certificate will be issued and then once every three years after the certificate has been issued. This rule varies slightly for large rental unit complexes. Certificates and inspections are free. The city has a supervisor and three other staff to carry out the program, which covers about 4,500 rental units.

Although the Monroe program has had some success, both the planner I spoke with and city attorney felt that there were problems with the program, and the planner thought that, overall, the program had not been successful. The planner noted that not all landlords – he was not sure how many – had registered their rental properties with the city. Also, inspectors cannot go inside without the permission of the owner or tenant, which limits their ability to conduct inspections. Finally, the city attorney noted that the certification program requires the city inspectors to devote all of their time to rental properties, neglecting owner-occupied properties. I spoke with Mr. Richard Davis, on city staff, and Mr. Terry Sholar, the city attorney, about the program.

Morganton: The city uses a certification program, with the business license and general police power statutes being the primary sources of authority. Adopted in May of 2002, rental landlords were required to obtain certificates for each rental unit or rental building by March 1, 2003. The certificate is free, and accessory units and other non-commercial rental units are exempted. Mr. Lee Anderson, the staff person who I spoke with, felt that the city has had "good success" thus far, with about 80% of city landlords complying by mid-May of this year.

The program requires an inspection every three years or every time three new tenants move into the units. In addition to being able to level civil and criminal penalties if a landlord does not comply with the ordinance, the city can shut off utilities to units not in compliance. Morganton enacted the program as a response to overcrowding problems and only after it had done a three-year study on the issue. The city has no plans to eventually plug the landlord database into its GIS system. To implement the program, the city hired one new inspector for a total of four inspections staff. These four inspectors conduct certification inspections in addition to doing the other city inspection work, and the department secretary performs most of the administrative work for the program. The Morganton staff estimated that the number of inspections being done in the city – both for the licensing program and other inspections – has jumped from 60 per month to 200 per month. It is likely that this number will decline after all of the city's rental units get their initial housing certificate inspection.

Appendix B



City of Salisbury

Tenant and Landlord Handbook



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Appendix C



*LANDLORDS AND TENANTS

(Please Note: This section only refers to residential leases. The law is different for commercial leases. Please see an attorney for more information.)

Your rights as a tenant
 Your duties as a tenant
 Your rights as a landlord
 Your duties as a landlord
 Security Deposits
 Late fees
 Who owns what
 Eviction

Your Rights as a Tenant

Landlords and tenants are free to bargain about many terms of rental agreements, and those who rent houses, apartments or mobile homes should feel free to seek changes in terms or conditions which they feel not in their best interest before signing any rental agreement. Once the bargaining is over and both landlord and tenant have agreed to a set of conditions or terms, both parties are required to carry out these terms and conditions. However, the landlord and the tenant have duties and rights established by law, and while the law provides great leeway for landlords and tenants to bargain about terms, the law does not permit either to surrender certain rights or fail to carry out certain duties established by law. (Note: This information refers to residential leases. The law is different for commercial leases. See an attorney for more information.)

As long as you fulfill your legal duties and the requirements of your rental agreement, you have the right to exclusive possession of property you rent or lease for the term of the rental agreement. However, even as you exercise your basic right to privacy, your landlord may retain in the lease a right to inspect your dwelling at reasonable times and in a reasonable manner. If your landlord does not live up to his duties as set by law and the terms of the rental agreement, you have the right to:

- complain to him,
- complain to appropriate government agencies, such as your local building and health departments,

Choose your topic be

RECENT CASES

Stay Tuned to this s
 the most recent CSLS
 court case...

Coming Soon!

HOT LEGAL TIPS

You are cruising alo
 road. Suddenly, as y
 a curve, you see the
 car parked on the sh
 You brake and look
 instinctively at you
 speedometer: you are
 the limit.

You brake and pass t
 police car. But the
 light comes and the
 car comes up behind
 dutifully pull over
 await the officer.

The officer arrives
 door and greets you
 courteously. And the
 poses a simple quest
 you know why I pulle
 over?"

Click Here to find o
 correct answer-- you
 like the consequence
 say the wrong thing!

- exercise your rights under law or the rental agreement which you have signed,
- join with other tenants to secure your rights.

These rights may be exercised without fear of eviction. In addition, if after reasonable notice, your landlord fails to carry out his legal duties, you have the right to move out of the dwelling you are renting, thereby ending your rental agreement. Moreover, you have the right to seek relief in court if the landlord fails to fulfill his duties. If you seek relief in court and the court decides in your favor, it may reduce the amount of rent you must pay until the landlord fulfills his duties, and or award you money damages. Tenants may not withhold rent payments in order to force the landlord to fulfill his duties without the permission of the court. If your rental agreement was prepared by your landlord, the law provides that in the event of a dispute between you and the landlord, any unclear terms or conditions should be interpreted in your favor.

Your Duties as a Tenant

As a tenant you have an obligation:

- To pay your rent as agreed and do other things required by your lease.
- To keep your home clean and safe. Get rid of trash and garbage in a clean and safe way. Use the toilet, sinks and baths in proper ways and keep them clean.
- Not to damage or let any of your family or guests damage your home. If you do, you are responsible and the landlord will not have to repair damage caused by you or your guests. However, you are not responsible for ordinary wear and tear or damage caused by nature or people you do not permit to come into your home.
- Vacate the premises at the end of the term, leaving them in good, clean condition. If you holdover at the end of the term and the landlord continues to accept rental payments from you, unless your rental agreement otherwise provides, the law may deem you to have entered a new term of lease according to the same terms as your rental agreement. For example, if you have a lease agreement for a one-year term and holdover at the end of the term you may be bound to an additional one-year term. To protect yourself you should make a thorough inspection of premises you intend to rent and set out in writing any damages or defects in the premises existing when you take occupancy, so that you will not be held responsible for them at the end of the term. If something goes wrong with your home which is the landlord's duty to fix, you should let him know in writing what needs to be repaired and you must give him a reasonable amount of time to get the repairs done. What amount of time is reasonable depends on the nature of the problem. Leaks, a broken furnace in winter, and bad wiring, etc., should be

corrected promptly. It may be reasonable, however, for a landlord to take a few weeks to repair other problems. If the problem is a real emergency, your notice to the landlord does not have to be written, but it is always wise to give a dated written notice and keep a copy for yourself.

REMEMBER: The landlord's obligation to perform his duties is dependent on your performance of your duties as a tenant.

Your Rights as a Landlord

If you are a landlord, you can rent your property for whatever amount you choose, although you may not raise rent during the term of a lease and you must give proper notice to your tenant of any change if there is a periodic tenancy (week-to-week or month-to-month). You may rent to whomever you wish and you may set any terms in your rental agreement you wish, provided that they are not contrary to local, state or federal laws. You do not have the right to relieve yourself of duties imposed on landlords by the law. While generally you may refuse to rent to anyone, you may not discriminate against a tenant or prospective tenant because of his race, color, religion, ancestry, sex, country of birth, handicap, or familial status. The prohibition against discrimination based on familial status makes it illegal, in most circumstances, to refuse to allow children to live in a residential unit. You may evict a tenant, who violates any provision of your rental agreement, which you and the tenant have agreed is a ground for eviction. Failure to pay rent is always a ground for eviction. You may reserve the right to enter, inspect, and make repairs on or show the rental property at reasonable times and in a reasonable manner. You have the right to have your property returned to you in the same condition as it was when the tenant took possession, with the exception of ordinary wear and tear and damage done by natural forces or people other than the tenant or his guests.

Your Duties as a Landlord

As a landlord you have a duty to:

- Comply with current applicable building and housing codes;
- Make all repairs and do whatever is necessary to put and keep the rental premises in a fit and habitable condition
- Keep all common areas in safe condition;
- Maintain in good, safe working order, and promptly repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances which you have supplied or are required by your agreement or any law to supply after you have been notified by the tenant of any defects in writing (in emergencies such notice does not have to be in writing).

You must perform any other duties required by your rental agreement. You may also be required to allow a tenant with a disability to modify the premises and accommodate that tenant's needs, at the tenant's expense. Except in emergencies, you must notify your tenants in writing of any breaches by the tenant of duties imposed on him by law.

Security Deposits

A landlord is permitted by law to charge his tenants, as a security deposit, up to two weeks' rent if the tenancy is week-to-week, up to one and a half month's rent if the tenancy is month-to-month, and up to two months' rent for tenancies of longer periods. If a tenant breaks a lease, the landlord may use the security deposit to protect himself from loss if (1) a tenant fails to pay rent, (2) damages the rental property, or (3) leaves before the end of the rental term or without proper notice, (4) if the landlord has court costs evicting the tenant or other costs of re-renting the rental property or (5) if a lien is created on the rental property because of the tenant's use. A landlord who receives a security deposit from a residential tenant must either deposit the money in a bank or savings and loan trust account or obtain a bond from a licensed insurance company to secure repayment of the security deposit to any tenant who is entitled to its return. The landlord must tell the tenant within 30 days after the beginning of the lease the name and address of the savings institution holding the account or the insurance company providing the bond. Within 30 days after the end of any lease the landlord must either refund the security deposit to the tenant or deliver an itemized statement of any damage or injury together with any balance of the security deposit. The landlord must hold the balance of any security deposit for at least six months. Landlords are not required by law to pay interest on security deposits to the tenant. Landlords may not withhold any part of the security deposit for conditions due to normal wear and tear. The landlord may keep the deposit only to the extent necessary to cover his losses. If a landlord sells the rental property, he must, within 30 days thereafter, either return the deposit balance in the manner set out above or transfer it to the new owner and notify the tenant of this fact. Tenants may sue landlords for accountings, the return of security deposits or for actual damages if the landlord fails to comply with his duties concerning such deposits. If a landlord is found by a court to have willfully failed to comply with the law concerning security deposits, the court has authority to require the landlord to pay the tenant a reasonable attorney's fee.

Late Fees

A landlord may impose, pursuant to a rental agreement, a late charge on any rental payment five days or more late, of the greater of \$15 or 5 percent of the rental payment, but no more. A late fee may be imposed only one time for each late rental payment and may not be deducted from a subsequent rental payment so as to cause the

subsequent rental payment to be in default.

Who Owns What

Tenants should be aware that unless they have an agreement with their landlord saying otherwise, any improvement the tenant makes to the rental property may become a part of the real estate, thus belonging to the landlord at the end of the rental term. Tenants should be aware of this before they install or affix anything to the real estate such as carpeting, bathroom fixtures, light fixtures, shutters, shrubs, etc.

Eviction

In North Carolina a landlord may evict tenants by a special court procedure called summary ejectment if the lease is breached or terminated. A landlord in North Carolina may not use self help such as cutting off utilities or locking tenants out of their homes in lieu of summary ejectment. The Clerk of Superior Court in your county has the forms and information you need to bring a summary ejectment action in magistrate's court.

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TOWN OF CARRBORO

NORTH CAROLINA

WWW.TOWNOFCARRBORO.ORG

ATTACHMENT 'C'

Memo

To: Patricia McGuire, Planning Administrator
From: James Harris, Director of Community and Economic Development
Date: September 12, 2003
Re: Fair Housing

When complaints are received by this office about poor housing conditions I contact the Building Inspections Division of the Town of Carrboro. Most of the time the complainant has contacted the division and an inquiry has begun. Mike Canova and I talk about the situation and we decide who will follow up on the complaint. If it is a clear building code violation then Mike follows up. If the complaint is a matter of a misunderstanding, then I follow-up on the complaint with the housing management group or landlord. Nine times out of ten we can resolve the situation. If the word discrimination is mentioned then I refer the complaint directly to the Orange County Human Rights Department. The attached flyer outlines the process that is to be followed.

How are Complaints processed?

1. All Complaints must be filed within 1 year of the date of the incident.

2. A staff member will hear your complaint and the Director will determine if it is covered by the Orange County Civil Rights Ordinance.

3. If the Ordinance applies, the Department will investigate the complaint and work with both parties to resolve the dispute.

4. The Staff person investigating the incident is not an advocate and does not represent either party. Staff has an obligation to conduct fair and impartial investigations.

All inquiries and complaints are treated confidentially. The law prohibits retaliatory action against any person because he or she has filed a complaint, opposed any action made unlawful by the Ordinance or served as a witness in a case.

Other Assistance

The Human Relations Staff is committed to providing information and assistance in order to promote equal opportunity and prevent discriminatory practices. The staff is available to provide workshops and seminars on many topics including:

- Housing Discrimination
- Employment Discrimination
- Equal Access
- Sexual Harassment
- Disabilities Discrimination

Additionally, the staff is available to answer questions or consult with individuals about problems or situations involving civil rights, equal opportunities or human relations.

Please call: (919)245-2250

Or write: Orange County Human Rights
110 S. Churton St.
Hillsborough, NC 27278

Housing

Discrimination

Is Against the Law...

"To

promote the equal

treatment of all individuals; to

prohibit discrimination in

Orange County based on race,

national origin, age, disability,

familial status and veteran

status."

Housing

Fair Housing is a right protected by federal, state, and local laws. The Orange County Civil Rights Ordinance prohibits housing discrimination based upon:

- A. Race
- B. Color
- C. Religion
- D. Sex
- E. National Origin
- F. Age
- G. Disability
- H. Familial Status
- I. Veteran Status

Housing Covered?

- A. Houses or apartments for sale or rent
- B. Mobile homes for sale or rent if they are on land and not being sold at the dealership.
- C. Mobile home parks
- D. Vacation homes
- E. Group homes for persons with disabilities
- F. Vacant lots of land being sold for housing

Housing not covered.

- A. The rental or sale of a room or unit in an owner-occupied building with no more than four (4) units.
- B. Housing operated by organizations and private clubs that give preference to or limit occupancy to its members.
- C. Commercial real estate.

The Ordinance protects an individual's basic right to fair and equal treatment when making housing choices. The Ordinance applies to the sale, rental and financing of residential housing.

How do you recognize housing discrimination?

Housing discrimination is rarely blatant and can be very subtle. Generally, housing providers don't say, "We don't accept Blacks," or "I'm sorry too many kids."

How can you tell you are being discriminated against? Here are some examples.

- An apartment manager refuses to rent an apartment to family with children, will only allow families with children to live in certain buildings or on certain floors, or charges families with children higher security deposits.
- A housing provider checks the records of all Black and Hispanic applicants and uses small credit problems as an excuse to refuse to rent apartments to minorities. However, that same housing provider does not check the credit reports of Caucasian Applicants
- A female tenant and her family are evicted from the home they rented because the woman refuses the housing provider's sexual advances.
- A Real Estate Agent tries to persuade someone not to buy or rent a house in a certain neighborhood because of the racial makeup of the neighborhood. This is called steering.
- Because it violates a "no pets allowed" policy, a provider refuses to rent an apartment to a person who is visually impaired and uses a seeing-eye dog.