

Table 1: Local Government Tools for Private Affordable Housing

NC Constitution and Statutes	Tools for Renters (Low Income Only)	
	No Subsidy	Subsidy (Constitutional/Statutory Reqmts)
<p>NC Constitution and case law supports housing assistance as aid for “poor.”</p> <p>Low-interest loans approved for moderate income with “same purpose in mind” (add-on to a low-income-focused program) “to make available decent, safe and sanitary housing” to another group “who cannot otherwise obtain such housing accommodations.” <i>In re Denial</i>.</p> <p><i>Necessity</i>: Activities serve a public purpose “only when the planning, construction, and financing of decent residential housing is not otherwise available” because “private enterprise is unable to meet the need.” <i>In re Denial</i> (1982); <i>Martin</i> (1970).</p> <p>No gifts or donations to nonprofit or for-profit developers. <i>Brumley v. Baxter</i> (1945). Housing funds are for “low income” and cannot be diverted for other purposes. All subsidy must flow to the eligible households.</p> <p><i>Housing Project</i> (160D-1311(b), G.S. 157-3) Defined as “single plan or undertaking” to provide financial assistance and housing for “persons of low income [60% AMI or below] or moderate income [reasonably 80% AMI or below].” If housing for “persons of other than low or moderate income” also included, then must set aside 20% of the units “for the exclusive use of persons of low income.” No affordability requirement.</p>	<ul style="list-style-type: none"> Housing counseling for renters Technical assistance to landlords Code enforcement with repair lien 	<p><i>Only for low-income - G.S. 157-3(12)(c)</i></p> <ul style="list-style-type: none"> Rental security deposit assistance Rental subsidy (such as vouchers)
	Tools for Homeowners (Low Income and Moderate Income)	
	No Subsidy	Subsidy (Constitutional/Statutory Reqmts)
	<ul style="list-style-type: none"> Convey property by sale or lease to homeowner for fair market value (FMV) with long-term affordability restrictions that reduce FMV Housing counseling for homeowner Statewide property tax exemptions Loan with market-rate terms Code enforcement with repair lien 	<ul style="list-style-type: none"> Convey property to homeowner for less than fair market value (FMV) Down payment assistance <ul style="list-style-type: none"> Low-interest loan Down payment grant Hybrid (shared equity) Emergency assistance <ul style="list-style-type: none"> Home repair program Mortgage assistance program Mortgage lender program (loan loss reserve)
	Tools for Developers or Landlords of Affordable Housing	
	No Subsidy	Subsidy (Constitutional/Statutory Reqmts)
	<ul style="list-style-type: none"> Conditional zoning overlay, development agreement Statewide property tax exemptions Predevelopment feasibility analysis Convey property at FMV which may be lower due to affordability restrictions (or use competitive bidding in URA) Reimbursement agreement or public-private partnership to construct public infrastructure Loan with market-rate terms Code enforcement with repair lien 	<p>Owner serves only as a conduit. All subsidy must flow to low and moderate income (LMI) households.</p> <ul style="list-style-type: none"> Convey property for less than FMV. Loan with subsidized terms Cash or reimbursement for subsidy provided to LMI persons. <p><i>Rent for low-income persons should be within their “financial reach” (G.S. 157-29). Unless all units reserved for LMI, 20% of units must be “set aside” for “exclusive use” of low-income persons (G.S. 157-3). See next page.</i></p>

Table 2: Statutory Set Aside Requirements for Low Income Affordable Units

All units reserved exclusively for low income (60% AMI or less) and moderate income (80% AMI or less). None over 80% AMI.

	Multifamily Rental	Homeownership
No financial assistance or subsidy permitted	<ul style="list-style-type: none"> • G.S. 160D-1316(3): Private sale to provide LMI housing • G.S. 160A-278: Privately negotiated lease of land for housing for low and moderate income (LMI) persons 	<ul style="list-style-type: none"> • G.S. 160D-1316(4): Private sale to LMI person
Subsidy provided (e.g., financial assistance or conveyance below fair market value); subsidy must flow to eligible persons	<ul style="list-style-type: none"> • G.S. 160D-1311(b), G.S. 157-9, G.S. 157-3 Housing Project <ul style="list-style-type: none"> ○ If “financial assistance to a multi-family rental housing project” then G.S. 157-9.4 requires at least 20% of the units in the project “shall be set aside for the exclusive use of persons of low income” (60% AMI or below) for “at least 15 years.” No affordability requirement but should be within “financial reach.” (G.S. 157-29) ○ County holds referendum if state or local funds used 	<ul style="list-style-type: none"> • G.S. 160D-1311(b), G.S. 157-9, G.S. 157-3 Housing Project <ul style="list-style-type: none"> ○ Subsidy only for LMI persons (80% AMI or less). ○ Case law approves <i>low-interest loans</i> up to 80% AMI ○ If “single undertaking or plan” provides housing to persons of other than low or moderate income, then 20% of units must be set aside for the exclusive use of persons of low income. No affordability requirement. ○ County holds referendum if state or local funds used

Residents above 80% AMI served. At least 20% of units set aside for exclusive use of low income persons (60% AMI or less).

	Multifamily Rental	Homeownership
No financial assistance or subsidy provided	<ul style="list-style-type: none"> • G.S. 160D-1311(b), G.S. 157-9, housing project defined at G.S. 157-3 <ul style="list-style-type: none"> ○ Even with no subsidy, if local government uses Housing Authorities Law powers for a housing project that provides housing to persons of other than low or moderate income, then 20% of units must be set aside for the exclusive use of persons of low income. No affordability requirement but rents within “financial reach.” 	
Subsidy provided (e.g., financial assistance or conveyance below fair market value); subsidy must flow to eligible persons	<ul style="list-style-type: none"> • G.S. 160D-1311(b), G.S. 157-9, G.S. 157-3 Housing Project <ul style="list-style-type: none"> ○ If “financial assistance to a multi-family rental housing project” then G.S. 157-9.4 requires at least 20% of the units in the project “shall be set aside for the exclusive use of persons of low income” (60% AMI or below) for “at least 15 years.” No affordability requirement but should be within “financial reach.” (G.S. 157-29) ○ County holds referendum if state or local funds used 	<ul style="list-style-type: none"> • G.S. 160D-1311(b), G.S. 157-9, G.S. 157-3 Housing Project <ul style="list-style-type: none"> ○ Subsidy only for LMI persons (80% AMI or less) ○ Case law approves <i>low-interest loans</i> up to 80% AMI ○ If “single undertaking or plan” provides housing to persons of other than low or moderate income, then 20% of units must be set aside for the exclusive use of persons of low income. No affordability requirement. ○ County holds referendum if state or local funds used

Residents above 80% AMI served. Less than 20% of units set aside for exclusive use of low income persons (60% AMI or less).

	Multifamily Rental	Homeownership
No financial assistance or subsidy permitted	<ul style="list-style-type: none"> • Zoning and public-owned infrastructure: conditional zoning & development agreement, reimbursement agrmnt • Convey land for other purposes: G.S. 160D-1312 (buyer adheres to community development plan); G.S. Chapter 160A, Art. 22 (competitive bidding and buyer adheres to redevelopment plan); G.S. 153A-163 (foreclosure) 	

Table 3: Local Government Property Conveyance for Affordable Housing

Conveyance Type	N.C.G.S.	Cnty Ref.?*	Set aside required?	Non-monetary consideration? See <i>Brumley</i> **
Any grantee (nonprofit or for profit)				
Private sale at fair market value (FMV) with affordability restrictions	160D-1316	No	All units must be reserved for LMI persons. See G.S. 157-9.4 if separate financial assistance provided for multifamily.	Fair market value (FMV) required but accounts for: <ul style="list-style-type: none"> • affordability restrictions • Property reverts back to govt if end restrictions (unless sell to LMI household)
Private sale with non-monetary consideration (in form of promise to provide LMI housing on the property)	157-9	Only if property acquired with state or local funds	20% set aside for low income required only if: <ul style="list-style-type: none"> • one or more units serve “other than” LMI • or G.S. 157-9.4 financial assistance for multifamily 	Non-monetary consideration is promise to provide LMI housing. Property reverts back to govt if end restrictions (unless sell to LMI household).
Competitive bidding with affordability restrictions	157-9	Only if property acquired with state or local funds	20% set aside for low income required only if: <ul style="list-style-type: none"> • one or more units serve “other than” LMI • or G.S. 157-9.4 financial assistance for multifamily 	Bid price is considered FMV but reflects: <ul style="list-style-type: none"> • affordability restrictions • Property reverts back to govt if end restrictions (unless sell to LMI household)
Lease at FMV	160A-278	No	20% set aside required for low income if one or more units serve “other than” LMI household	Fair market lease rate required, but lease rate should account for affordability restrictions
Nonprofit grantee only				
Private sale with non-monetary consideration (in form of promise to use <u>only</u> for LMI persons)	160A-279 to accomplish 160D-1316 activities.	No	All units must be reserved for LMI persons. See G.S. 157-9.4 if separate financial assistance provided for multifamily.	Non-monetary consideration is promise to provide LMI housing. Property reverts back to govt if ceases to be used by recipient for that purpose (unless sell to LMI household).
Private sale with non-monetary consideration (a promise to provide LMI housing with “other than” LMI persons also served)	160A-279 to accomplish 157-9 activities.	Only if property acquired with state or local funds	20% set aside for low income required due to serving “other than” LMI household. See G.S. 157-9.4 if separate financial assistance provided for multifamily.	Non-monetary consideration is promise to provide LMI housing. Subsidy from lower sale/lease price must flow to eligible LMI households. Property reverts back to govt if ceases to be used by recipient for that purpose (unless sell to LMI household).

* Referendum imposed on counties by G.S. 160D-1311(d). No referendum required for municipalities and housing authorities.

***Brumley v. Baxter*, 251 N.C. 691 (1945) (conveyance to charity unconstitutional unless conditioned on reversion back to county once no longer used by the recipient for charitable public purpose).