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*Agency of Commerce and
Community Development*

MEMORANDUM

TO: Municipal Planning and Development Review Officials
FROM: Chris Cochran, Director of Community Planning and Revitalization Division
Vermont Department of Economic Housing and Community Development (DEHCD)
DATE: August 6, 2012
RE: **2011 & 2012 Legislative Revisions to Vermont's Planning and Development Act and to the
Downtown Development Act**

A number of laws and amendments affecting local planning and regulation were enacted during the 2011 and 2012 Vermont legislative sessions. As in past years, we are issuing this memo to inform municipal officials of changes in statute and to provide web links to the pertinent statutory language.

The [Vermont Statutes Online](#) are scheduled to be updated sometime in October but as of today do not yet incorporate the 2012 changes. An updated copy of the – the [Vermont Municipal and Regional Planning and Development Act](#) (24 V.S.A Chapter 117 and related statutes) is available for [download](#) on the ACCD website. DEHCD memos summarizing the statutory changes starting in 2007 can be found [here](#).

In assembling this list of 2011 and 2012 statutory amendments, we are indebted to Sharon Murray, for the comprehensive summaries she produced for the [Vermont Planners Association](#) (VPA) and to the Vermont League of Cities and Towns for the [2011](#) & [2012](#) Legislative Wrap-Ups.

2011 Amendments

Economic Development Element Required in Municipal and Regional Plans

Act 52 (H.287) - <http://www.leg.state.vt.us/docs/2012/Acts/ACT052.pdf> - amends 24 V.S.A. §4382(a), adding subsection (11).

Section 33 of the 2011 Jobs Bill, amends current statute, adding an 11th required element for municipal plans (see underlined):

§ 4382. THE PLAN FOR A MUNICIPALITY

(a) A plan for a municipality may be consistent with the goals established in section 4302 of this title and compatible with approved plans of other municipalities in the region and with the regional plan and shall include the following:

* * *

(11) An economic development element that describes present economic conditions and the location, type, and scale of desired economic development, and identifies policies, projects, and programs necessary to foster economic growth.



This requirement goes into effect on July 1, 2012. DEHCD interprets this effective date to mean that any municipal or regional plan adopted or readopted after July 1, 2012 must include an economic development element. Those plans adopted before that date will continue to remain in effect until expiration or until they are amended or readopted, at which point they must include the new economic development element.

Guidance and training for local officials on addressing economic development in municipal plans will be developed over the next several months and will be announced through the regional planning commissions, list serves and other sources including www.vpic.info. If your municipality has adopted a plan with an economic development element that you think would provide a good example for other towns, please notify us.

Vermont Neighborhoods Designation - Landowners Now Allowed to Apply

Act 52 (H.287) - <http://www.leg.state.vt.us/docs/2012/Acts/ACT052.pdf> - amends 24 V.S.A., Chapter §2793d in Section 23 and 23a

The Vermont Neighborhoods program, administered by our department, offers state tax and permitting incentives to affordable, high density housing developments in smart growth locations. Previously only municipalities could apply for this designation. The 2011 amendment gives landowners the option to apply as long as the development project has gone through a special public hearing process and received municipal approval and the municipality provides a letter of support for the designation.

Complete Streets - Accommodate All Users in Road Planning, Design and Maintenance

Act 34 (H.198) - <http://www.leg.state.vt.us/docs/2012/Acts/ACT034.pdf> - Amends highway statutes under Title 19.

Municipalities as well as the Vermont Agency of Transportation are directed to consider the needs of all users, not just motorists, in making transportation improvements after July 1, 2011. The statute also allows for certain exemptions and contains mandatory reporting requirements. Both the state and municipalities are required to document any decisions not to apply complete streets principles to transportation projects.

Sec. 1. PURPOSE

The purpose of this bill is to ensure that the needs of all users of Vermont's transportation system—including motorists, bicyclists, public transportation users, and pedestrians of all ages and abilities—are considered in all state and municipally managed transportation projects and project phases, including planning, development, construction, and maintenance, except in the case of projects or project components involving unpaved highways. These "complete streets" principles shall be integral to the transportation policy of Vermont.

Training and guidance for municipalities on Complete Streets is currently being planned. Stay tuned to www.vpic.info for more information. In the meantime the complete streets concept is introduced here: <http://www.completestreets.org/>.

Telecom/Broadband – Zoning Exemption Extended to 2014

Act 53 (S.78) - <http://www.leg.state.vt.us/docs/2012/Acts/ACT053.pdf> - Sections 2 and 14 of the bill.

Provisions of this bill adjust the Public Service Board process to expedite the issuing of Certificates of Public Good (30 V.S.A. § 248a) for telecom/broadband installations. All such projects have been exempt from municipal review – either through ordinances enabled in 24 V.S.A. § 2291 (19) or bylaws in § 4414 – for the past three years and this bill extends that exemption until July 1, 2014.



Provisions applying to municipalities include a new subsection in 24 V.S.A. § 4413, that exempts ancillary and other telecom improvements for regulation under local bylaws.

(h)(1) Except as necessary to ensure compliance with the national flood insurance program, a bylaw under this chapter shall not regulate any of the following:

(A) An ancillary improvement that does not exceed a footprint of 300square feet and a height of 10 feet.

(B) The following improvements associated with the construction or installation of a communications line:

(i) The attachment of a new or replacement cable or wire to an existing electrical distribution or communications distribution pole.

(ii) The replacement of an existing electrical distribution or communications distribution pole with a new pole, so long as the new pole is not more than 10 feet taller than the pole it replaces.

(2) For purposes of this subsection:

(A) “Ancillary improvement” shall have the same definition as is established in 30 V.S.A. § 248a(b).

(B) “Communications line” means a wireline or fiber-optic cable communications facility that transmits and receives signals to and from a local, state, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or state purposes.

30 V.S.A. § 248a(b)

(1) “Ancillary improvements” means telecommunications equipment and site improvements that are primarily intended to serve a telecommunications facility, including wires or cables and associated poles to connect the facility to an electric or communications grid; fencing; equipment cabinets or shelters; emergency backup generators; and access roads.

These limitations on municipal regulation of telecom/broadband facilities, as well those in 24 V.S.A. § 2291(19), will expire on July 1, 2014.

Notice of minor modifications is required to the landowner of record, the municipality and the commissioner of the Department of Public Service and its public advocate of proposals, allowing for objection to the designation of the project as a de minimus modification (a minor project not requiring a permit). See 30 V.S.A. § 248a (k).

New language also allow for creation of a rebuttable presumption in the Public Service Board Certificate of Public Good process regarding compliance with a municipal plan. The rebuttable presumption for a municipal plan is requested by letter from an affected municipal legislative body or planning commission. Compliance with a regional plan is requested from a regional commission. See 30 V.S.A. § 248a (c) (2). A “rebuttable presumption” means that the Public Service Board will consider statements from municipalities and the regional commission to be evidence of compliance with the local and regional plans unless that “presumption” is challenged by another party.

Miscellaneous Amendments Relevant to Local Planning and Regulation

A number of other bills that have some bearing on local planning or regulation but that do not directly involve changes to Chapter 117 were also passed. These include the following.

Energy Bill. Act 47 (H.56) - <http://www.leg.state.vt.us/docs/2012/Acts/ACT047.pdf>. Section 20e of this bill mandates a list of considerations for future state energy plan updates, including the current effort by the public service board to update the energy plan before the end of 2011. There are no new requirements for municipal planning but certain requirements for the state energy plan may be of interest to local officials especially in regards to addressing the required energy element in the municipal plan. This includes a new requirement that the state energy plan consider:



(2) The relationship of energy use and land use, including land devoted now or in the future to cultivating biomass energy resources and the interrelationship among modes of transportation (such as single-occupancy or low efficiency vehicles), energy consumption, and settlement patterns.

Medical Marijuana. Act 65 (S.17) - <http://www.leg.state.vt.us/docs/2012/Acts/ACT065.pdf>. This bill establishes a framework for registering up to four nonprofit medical marijuana dispensaries in the state. An amendment to 18 V.S.A. chapter 86, states that medical marijuana dispensaries may be regulated by municipalities.

§ 4474I. REGULATION BY MUNICIPALITIES

Nothing in this subchapter shall be construed to prevent a municipality from prohibiting the establishment of a dispensary within its boundaries or from regulating the time, place, and manner of dispensary operation through zoning or other local ordinances.

Tax Bill. Act 45 (H.436) - <http://www.leg.state.vt.us/docs/2012/Acts/ACT045.pdf>. This Bill makes numerous changes to Vermont tax code including those addressing current use. The definition of “development” for the purpose of assessing the land use change tax for properties in current use has been expanded as follows (see section 13a of the bill):

32 V.S.A. § 3757(a) is amended to read:

(a) Land which has been classified as agricultural land or managed forest land pursuant to this chapter shall be subject to a land use change tax ~~upon~~ on the earliest of either the development of that land, as defined in section 3752 of this chapter, or two years after the issuance of all permits legally required by a municipality for any action constituting development, or two years after the issuance of a wastewater system and potable water supply permit under 10 V.S.A. § 1973... (See statute for full language.)

Transportation Bill. Act 62 (H. 443) - <http://www.leg.state.vt.us/docs/2012/Acts/ACT062.pdf> -

This year’s transportation bill included miscellaneous provisions affecting local scenic roads and sign regulations. Changes were made to the rules governing state and local scenic roads and byways. See 10 V.S.A. §425 and 19 V.S.A. §2502. In particular, standards for improvements to local scenic roads have changed:

§ 2502 (b) a town scenic road may be reconstructed or improved in a manner consistent with the agency of transportation’s Vermont Design Standards, as amended... (See statute for full language.)

Previously the standards were to be consistent with those adopted by the Transportation Board. Sections 21-26 of the bill show what language was removed and added.

Section 29 of the bill amends the state sign law to authorize signs displaying a message of congratulations, condolences, birthday wishes, or commemorating a personal milestone or event, for a period of up to two weeks. This was added to the section on exemptions, 10 V.S.A. § 494 (16). State law does not supersede local regulations that are stricter, as established in 10 V.S.A. § 505.

In Section 30, the Travel Information Council is directed to adopt rules about what constitutes a sign with flashing intermittent or moving lights or moving parts within the meaning of existing law, and to study whether the existing list of "exempt signs" set forth at 10 V.S.A. § 494 should be amended. Stay tuned for the results of that study.

2012 Amendments

Unfair Housing Practices - Land Use, Mobile Homes, Affordable Housing

Act 137 (S.99) <http://www.leg.state.vt.us/docs/2012/Acts/ACT137.pdf> - Amends 9 V.S.A. § 4503 and 24 V.S.A. § 4412; adds 9 V.S.A. § 2608.



Title 9 V.S.A. , § 4503 has been amended to prohibit discrimination “in land use decisions or in the permitting of housing because of race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, disability, the presence of one or more minor children, income, or receipt of public assistance.” Additionally, V.S.A. § 4412 has been amended to make it illegal for any bylaw to have the effect of discriminating in the permitting of housing as specified above. Existing provisions in Chapter 117 require bylaws and municipal plans to ‘provide for’ affordable housing, whereas this change makes it illegal to deny permits based on the fact of *who* is going to be living there.

Act 137 also incorporates a new procedure allowing a municipality to commence action to sell an abandoned mobile home at public auction.

Flood Hazard Areas

Act 138 (S. 202) <http://www.leg.state.vt.us/docs/2012/Acts/ACT138.pdf> - Amends 10 V.S.A. Ch. 32 (Flood Hazard Areas), Ch. 41 (Regulation of Stream Flow), Ch. 47 (Water Pollution Control), Ch. 49 (Protection of Navigable Waters and Shorelands), and Ch. 151 (State Land Use and Natural Resources Panel); amends 24 V.S.A. Ch. 117 (Municipal and Regional Planning and Development)

The purpose of the act is to facilitate intergovernmental coordination of flood hazard area management; encourage and enable local management of flood hazard areas, and to comply with NFIP requirements. Several elements of the act include:

- Revised definitions
- Requirement that ANR provide a model flood hazard area bylaw, education, and technical assistance to towns that lack a flood hazard area bylaw.
- Requirement that ANR adopt rules to regulate exempt uses (agricultural, silvicultural activities, transmission lines) in flood hazard areas.
- Authority given to Towns to adopt a flood hazard area ordinance instead of a bylaw.

Towns may adopt a flood hazard area ordinance instead of a bylaw, which would be helpful to municipalities that do not have zoning bylaws in place or which are prohibited from amending zoning bylaws until their municipal plans are re-adopted.

Removal of in-stream material and large woody debris or construction of berms in flood hazard areas or river corridors will be prohibited without an ANR permit unless the work is done at the direction of the local legislative body as an emergency protective measure. ANR will conduct training on the proper conduct of stream alteration, water quality and stormwater and wastewater discharge during an emergency and will adopt rules for the permitting of stream alteration activities in emergencies.

The ANR secretary needs to also make available several model river corridor protection area bylaws or ordinances for municipal adoption, and must establish a Flood Resilient Communities Program that lists financial incentives available for municipalities that adopt bylaws to protect river corridors and flood plains.

The “Municipal Toolbox” Bill



Act 155 (S.106) <http://www.leg.state.vt.us/docs/2012/Acts/ACT155.pdf> Amends 10 V.S.A. § 2675; 20 V.S.A. § 3622; 24 V.S.A. §§ 1974a, 4451, 1236, 1408, 1762, 1972, 2291, 4303, 4408, 4412, 4442; and 27 V.S.A. § 1404(b); repeals 20 V.S.A. §§ 3741-3747; 24 V.S.A. §§ 2404, 2405; and 27 V.S.A. §1403 (b)(8)

The bill compiles a number of issues in the municipal statutes that need clarification or updating, including:

- Fines for zoning violations are doubled to \$100 and maximum fines for violating municipal ordinances are increased from \$500 to \$800.
- Posting notices for ordinances, bylaws and rules have been simplified and municipalities may post a summary of an ordinance or rule, rather than the full text, in a newspaper.
- A definition of public roads was added to 24 V.S.A. Chapter 117.
- New standards are created for the recording of survey plats.

Miscellaneous Amendments Relevant to Local Planning and Regulation

A number of other bills that have some bearing on local planning or regulation but that do not directly involve changes to Chapter 117 were also passed. These include the following.

Stormwater Regulation

H.752, (Act 91) <http://www.leg.state.vt.us/docs/2012/Acts/ACT091.pdf> Amends 10 V.S.A. § 1264

Act 91 amends the stormwater statutes so as to clearly establish a “net zero” standard for stormwater impaired watersheds – that is, no more sediment is caused by a stormwater discharge than would occur if the discharge site were in its preexisting or natural condition.

Vermont’s Working Landscapes

Act 142 (H.496) <http://www.leg.state.vt.us/docs/2012/Acts/ACT142.pdf> - amends 6 V.S.A. Chapter 207

The purpose of the bill is to support expansion of existing businesses, innovation, and growth in the food, farm, forest product, and biomass energy industry, as well as a host of other responsibilities to strengthen the agriculture and forestry sectors of the economy.

A Vermont Working Lands Enterprise Board is created by the Act and the Board will administer the ‘Vermont Working Lands Enterprise Fund.’ The budget bill (H.781), provides \$1.175 million from the General Fund to the Enterprise Fund.

If you have questions about these new provisions, please contact [John Adams](#), DEHCD Planning Coordinator (802-828-0162). Assistance may also be available from your [Regional Planning Commission](#) and the [Municipal Assistance Center at the Vermont League of Cities and Towns](#).

