

MEMORANDUM

TO: Municipal Planning and Development Review Officials
FROM: Vermont Department of Housing and Community Development (DHCD)
Jacob Hemmerick, Community Planning & Policy Manager (DHCD)
Max Krieger, General Counsel (DHCD)
DATE: October 26, 2020
RE: 2020 Legislative Revisions to Affecting Land Use Planning &
Implementation

In 2020, Vermont’s General Assembly enacted several laws and amendments affecting municipal and regional planning and regulation. 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 typically updated in October and do not include the prior session’s changes until then. Since this year’s unusual session continued into September, updates will be later than usual but are expected prior to the start of the next session. Links provided below connect to the bills as enacted.

In compiling these statutory updates, we owe thanks to Alex Weinhagen, for his work as Legislative Liaison for the [Vermont Planners Association](#) (VPA) and to the [Vermont League of Cities and Towns](#) advocacy team (VLCT) for their companion legislative updates.

Act 250 | H.926

The General Assembly’s focus quickly shifted in March to address the pandemic, and led to a paring down of many bills, including the Act 250 reform bill. Act 250 exemptions for designated downtowns and neighborhood development areas were stripped from House Bill 926 along with several other elements. The Governor [vetoed](#) the final version, stating that it fell short of a comprehensive, balanced modernization package that had broad support. Related, the Governor issued an [executive order](#) directing the Agency of Natural Resources to develop best practices that facilitate Act 250 criteria compliance for recreational trails while awaiting further action on comprehensive Act 250 reform.



Tax Credit Expansion

Act 154 | An act relating to making appropriations for the support of government | H.969

Link: <https://legislature.vermont.gov/bill/status/2020/H.969>

Legislators approved a \$400,000 increase to the downtown and village center tax credits. The tax credit program began in 2000 with a \$300,000 annual cap. It took twenty years and eight bills to increase the cap to a total of \$3M. Related efforts to expand the area of tax credit eligibility to designated neighborhood development areas and to allow the use of the credits for flood-proofing vulnerable development were not successful.

Bylaw Reforms for Infill & Housing

Act 179 | An act relating to promoting affordable housing | S.237

Link: <https://legislature.vermont.gov/bill/status/2020/S.237>

Effective upon passage, the act makes consequential changes to the Planning & Development Act's permissible types of zoning regulation and required provisions and prohibited effects for municipal bylaws. It establishes statutory standards that:

- Allow accessory dwelling units (ADUs) as a permitted use on owner-occupied lots with a single-family dwelling to have more than one bedroom and be as large as 900 s.f. or 30% of the floor area of the principal dwelling (whichever is greater) -- a municipality may continue to be more permissive than this statutory minimum, subject the ADU to the same controls that apply to a single-family dwelling, and regulate it distinctly from a short-term rental;
- Enable the development of existing small lots that can connect to water and sewer infrastructure and continues to allow municipalities to prohibit development of other specified small lots;
- Prohibit denial of small (<4 units) multi-family dwellings based on an undue adverse effect on character of the area; and
- Under Title 27 and effective January 1, 2021, limits new covenants and deed restrictions that prohibit development local regulations otherwise allow, unless the covenants relate to historic or conservation easements held by a qualified organization.

In addition, the act allows municipalities to regulate short-term rentals using ordinances that do not adversely affect long-term housing and directs DEC to assist in the implementation of Brattleboro's Tri-Park master plan for essential infrastructure and report on ways to improve infrastructure funding programs for other mobile homes parks.

Electronic Meetings, Minute Posting Delays & Permitting/Planning Deadline Extensions

Act 92 | An act relating to government operations in response to the COVID-19 outbreak | H.681 §5&8

Link: <https://legislature.vermont.gov/bill/status/2020/H.681>

The act extended the initial flexibilities to local governments after the shutdown. In addition to allowing accessible electronic meetings and allowing more time to post minutes, the act allows a municipality to extend deadlines for licenses, permits, programs, or plans issued by the municipality up to 90 days after the date that the declared state of emergency ends. For the same period, it also authorizes state agencies to extend deadlines applicable to municipal corporations or regional planning commissions and maintains the validity of expiring permits and plans issued to a municipality.



Electronic Quasi-Judicial Proceedings During Emergency

Act 106 | An act relating to temporary municipal proceedings provisions in response to the COVID-19 outbreak | H.948

Link: <https://legislature.vermont.gov/bill/status/2020/H.948>

The act makes accommodations during the COVID state of emergency to allow quasi-judicial proceedings (such as those conducted by Development Review Boards, Planning Commission, Zoning Boards of Adjustments) to conduct business via electronic means without a designated physical location.

Electronic Posting of Meeting Notices

Act 113 | An act relating to temporary municipal provisions in response to the COVID-19 outbreak | S.345

Link: <https://legislature.vermont.gov/bill/status/2020/S.345>

Valid during the declared state of emergency, the act allows municipalities to post meeting agendas and notices in two designated electronic locations instead of the normal physical locations, but adds a requirement to notice the local newspaper of general circulation.

Public Safety Planning

Act 166 | An act relating to governmental structures protecting the public health, safety and welfare
| H.681 §32

Link: <https://legislature.vermont.gov/bill/status/2020/H.681>

By December 31, 2021, the act directs each regional planning commission to create an inventory identifying the public safety resources of each town within its boundaries and report that inventory to all towns. The inventory must also identify all mutual aid agreements and all public safety plans towns have in place.

Retail Cannabis

Act 164 | An act relating to the regulation of cannabis | S.54

Link: <https://legislature.vermont.gov/bill/status/2020/S.54>

Fully effective in 2022, this act legalizes the production, testing, distribution, and retail sales of cannabis under a new Cannabis Control Board. The key elements affecting municipal planning are found in §863, which outline:

- That retail sales will only be allowed in communities that vote to opt-in;
- Opt-in municipalities may establish a local cannabis control commission for license review;
- Opt-in municipalities may not outright prohibit the use by ordinance; and
- That licenses may be conditioned upon compliance with local zoning, sign, and nuisance ordinances.

Cultivation, testing, warehousing, and distribution are not subject to an opt-in and will generally not be regulated as farming, but nonetheless will be subject to some Required Agricultural Practices.

Prior DHCD memos summarizing the statutory changes starting in 2007 can be found at <http://accd.vermont.gov/community-development/resources-rules/planning>.

