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*Agency of Commerce and
Community Development*

MEMORANDUM

TO: Municipal Planning and Development Review Officials
FROM: Faith Ingulsrud and Dale Azaria
Vermont Department of Housing and Community Development (DHCD)
DATE: June 27, 2017
RE: **2017 Legislative Revisions to Vermont’s Planning and Development Act, the
Downtown Development Act and Act 250**

In 2017 the General Assembly enacted several laws and amendments affecting local 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 updated in October and will not include the 2017 changes until then. Links provided below go to the bills as enacted.

In compiling these statutory amendments, we are indebted to Alex Weinhagen, for his work as Legislative Liaison for the [Vermont Planners Association](#) (VPA) and to the [Vermont League of Cities and Towns](#) (VLCT) for their 2017 Legislative Updates.

Economic Development Bill

Act 69 (S.135)

<http://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT069/ACT069%20As%20Enacted.pdf>

Amends multiple statutes

Act 69 updates existing law addressing housing and downtown development as well as infrastructure investment. Recommendations of the 2016 [Act 157 Report](#) on housing and infrastructure solutions informed the legislation that increases funding for the downtown and village center tax credits, expands the existing Act 250 exemptions for Priority Housing Projects and enables new Tax Increment Financing districts. Combined, these changes aim to help municipalities and the state increase housing and economic development investments in ways that respects Vermont traditional development pattern of compact centers surrounded by rural, working lands. Provisions of the act that relate to municipal planning and regulation include the following.

Outreach to Municipalities – Directs the Agency of Natural Resources to conduct an outreach campaign to make municipalities aware of the opportunity under current law (10 V.S.A. § 1976), to delegate authority to qualified municipalities for permitting for water and sewer connections. To date, only two municipalities have sought and obtained delegation. This law aims to increase the number of municipalities with authority to issue water/wastewater permits, thereby speeding permitting overall by eliminating state water/wastewater permitting in those municipalities



Definition of Affordable Housing (24 V.S.A. Chapter 117 and Act 250) – Adjusts definition of “affordable housing” in 24 V.S.A. § 4303 (municipal zoning) and 10 V.S.A. § 6001 (Act 250) for owner-occupied housing in the following ways:

- The housing unit must be affordable to a household (30% of income) that earns 120% of the area median income, as defined by HUD. Current law requires 80% of area median income for owner-occupied housing.
- The percentage of gross annual income – 120% for owner occupied and 80% for rental – may be based on either the county median income or on median income defined in the standard metropolitan statistical area as was the case previously or on the statewide median income as defined by HUD, whichever is higher.
- For rental housing, the definition of “mixed income housing” was changed to reduce the duration of affordability to not less than 15 years.

These changes in the definition of “affordable housing” are intended to encourage more middle-income housing development.

The Department of Housing and Community Development (DHCD) together with the Vermont Housing Finance Agency (VHFA) are required to annually publish data and information on median income levels for determining if a housing project is “affordable” for use in Act 250 review and in local planning and regulation. This task was added to 3 V.S.A. § 2472 (a), the statute identifying the functions of DHCD.

Provisions on Priority Housing Projects – Within the Act 250 definitions for what constitutes “development” in 10 V.S.A. § 6001, adjustments were made to broaden the range of housing projects that qualify as a Priority Housing Projects (PHPs) – mixed income housing projects in state designated areas (downtowns, etc.) that are exempt from Act 250 review (see [PHP flow chart](#)). Other changes establish administrative procedures to expedite PHPs on land with existing permits while addressing any underlying Act 250 issues for the property. These changes involve the following:

- The cap on the size of a development project qualifying as a PHP in municipalities with a population of 10,000 or more is removed. The previously defined caps still exist for municipalities having less than 10,000 residents as detailed in 10 V.S.A. § 6001(3)(A)(iv)(I).
- The duration of the affordability requirement for rental housing units in a PHP was reduced from 20 years to 15.
- Any substantial change to a previously exempt PHP will be subject to Act 250 review if the state designation for the area is removed.
- No permit or permit amendment is required for PHPs located in a designated area on property with an existing Act 250 permit as long as the PHP complies with all conditions of the underlying permit and the project does not exceed the cap on the number of units for the municipality as referenced above.
- An administrative amendment process is established to permit PHPs on properties that have existing Act 250 permits. The Administrative amendment may be issued without notice or a hearing if the applicant demonstrates that all parties have consented to the changes that the PHP would require. If parties identify issues of concern, Act 250 review of the PHP is limited in scope to just those criteria for which the parties or successors had previously obtained party status. Added as 10 V.S.A. § 6084 (f).

Stretch Code Required for Priority Housing Projects (PHPs) – PHPs must meet or exceed the [Stretch Code](#) for energy efficient residential building construction. This requirement found in 30 V.S.A. Subchapter 1 on Building Energy, increases the initial cost of multi-income housing construction but is intended to reduce the maintenance and energy costs long term.



Other Economic Incentives for Housing:

- Increases the annual amount of tax credits for renovating of historic buildings from \$2,200,000.00 to \$2,400,000.00. These [downtown and village center tax credits](#) have been an effective tool for revitalization throughout the state.

Tax Increment Financing (TIF) Opportunities Expanded – The cap on new TIF districts is increased to allow an additional six TIF districts beyond those already approved with a maximum of two from each county. TIFs allow a portion of the increased tax receipts on newly improved properties in the TIF district to be redirected to fund the public infrastructure that supports the project. The amount of the increment that can be used for repaying the financing of infrastructure in the TIF district was reduced from 75% to 70% of the state education property tax increment. At least 85% of the municipal property tax increment must now be used for repaying the financing. Other TIF changes include:

- Updated criteria for the Vermont Economic Progress Council (VEPC) to approve TIF districts. See 32 V.S.A. § 5404a (h).
- Enabling municipal-only TIF districts that do not use the statewide education property tax increment, with procedures established in a new section: 32 V.S.A. § 1904.

A multi-agency report to the legislature is required on TIF with annual updates concerning the fiscal impacts, projected costs and the documented benefits of TIFs. This will be used to help the legislature determine if additional TIF districts will be authorized.

Rural Economic Development Infrastructure (REDI) Districts – The purpose of this chapter is to enable formation of special municipal districts to finance, own, and maintain infrastructure that provides economic development opportunities in rural and under resourced areas of the State, including areas within one or more municipalities. Specifically, this chapter provides mechanisms for public and private partnerships, including opportunities for tax-incentivized financing and voluntary citizen engagement, to help overcome hardships inherent to rural areas.

Rural Economic Development Initiative (REDI)

Act 77 (S.34)

<http://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT077/ACT077%20As%20Enacted.pdf>

Separate from the REDI Districts in Act 69 described above, the Rural Economic Development Initiative in Act 77 enables small towns with a population of less than 5,000 and the businesses within those towns to be eligible for help with identifying, applying for and administering funding opportunities to facilitate business development and siting, workforce development, broadband and infrastructure development and other economic opportunities. The Vermont Housing and Conservation Board (VHCB) receives \$75,000 to facilitate these services in coordination with ACCD and other state agencies. This initiative may be useful to municipalities with limited staff that wish to pursue economic development goals in several priority areas such as value-added forest and food products, outdoor equipment and recreation, and compost facilities.



Commission on Act 250

Act 47 (H.424)

<http://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT047/ACT047%20As%20Enacted.pdf>

Act 47 creates a legislative committee to examine and report by December 15, 2018 on a broad list of issues relating Act 250. The legislative committee includes 6 members, 3 from the House and 3 from the Senate. Advisors to the legislative committee include

- Chair of the NRB,
- Representative from a statewide environmental organization
- Vermont college or university professor,
- Representative from Vermont Association of Planning and Development Agencies,
- Representative from Vermont Planners Association
- Representative from a Vermont-based real estate development business
- Municipal official
- Chair of the Environmental Law Section of the Vermont Bar
- Secretary of Agriculture or designee
- Secretary of Commerce or designee
- Secretary of Natural Resources or designee
- Secretary of Transportation or designee
- Act 250 district coordinator or commissioner

The Commission is instructed to familiarize itself with the history and outcomes of Act 250 and Chapter 117, convene a series of public hearings (next summer/fall), and prepare a report for the legislature by December 15, 2018.

Act 47 also states that the Chair of the Natural Resources Board (NRB) has convened a working group on Act 250 to include the NRB and the Agencies of Commerce and Community Development and of Natural Resources, with assistance from the Agencies of Agriculture, Food and Markets and of Transportation. The working group is expected to make recommendations during October 2017.

Permitting for Planting Projects in Flood Hazard Areas

Act 4 (H.53)

<http://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT004/ACT004%20As%20Enacted.pdf>

Amendments to 24 V.S.A. § 2291, 4412 and 4424

This act provides that a planting project in a flood or other hazard area or river corridor protection area shall be considered to have a municipal land use permit by operation of law. However, a planting project will not be considered to have a permit by operation of law if it is part of a larger undertaking that includes construction or other physical disturbance of land, or is a forestry operation or a component of such an operation. The permit applies to “planting projects” – planting vegetation to restore natural and beneficial floodplain functions, as defined in 42 U.S.C. § 4121(a), that include floodwater storage, water quality improvement, and supporting riparian and aquatic habitat.

The Act amends the required provisions and prohibited effects of 24 V.S.A. 4412, prohibiting a bylaw from requiring an application or the issuance of a permit by the municipality for a planting project considered to have a permit by operation. The permit by operation is detailed in a new subsection in 24 V.S.A. § 4424(c).



Review of Energy Facilities and Telecommunications Siting

Act 53 (S.52)

<http://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT053/ACT053%20As%20Enacted.pdf>

Amendments to 30 V.S.A.

Act 53 makes adjustments to the Section 248a review addressing energy and communications facilities for a Certificate of Public Good (CPG). The changes allow for municipal and regional planning commissions to hold public hearings, recommend that the Department of Public Service retain experts to review proposed facilities, and make recommendations regarding the facility to the petitioner and/or to the Public Service Board (now known as the Public Utility Commission). Procedures for permit enforcement by the Public Service Department are also clarified.

In Section 9 of this legislation, the name of the decision-making body, the Public Service Board, is changed to the Public Utility Commission.

Telecommunications siting law

Act 32 (H.50)

<http://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT032/ACT032%20As%20Enacted.pdf>

Amendments to 30 V.S.A. § 248a

Act 32 modifies the telecommunications siting law to impose new requirements for the notice that applicants for a Certificate of Public Good (CPG) must provide to municipalities, to notify the municipal bodies of rights and opportunities that they have under existing law, as well as notice of how to obtain an existing guide to the telecommunications siting process before the Public Utilities Commission (PUC) – formerly the Public Service Board. The new law does not change the municipality's process or response.

The legislation also extends the sunset on PUC jurisdiction over telecommunications facilities from July 1, 2017 to 2020.

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

