



State of Vermont

Agency of Commerce and Community Development

Department of Housing and Community Development

National Life Building – North

One National Life Drive

Montpelier, VT 05620-0501

[phone] 802-828-3211

MEMORANDUM

TO: Municipal Planning and Development Review Officials

FROM: Vermont Department of Housing and Community Development
Jacob Hemmerick, Community Planning & Policy Manager
Maxwell Krieger, General Counsel

DATE: June 28, 2023

RE: Act 47 (S.100) Summary
Version 2

Vermont's General Assembly enacted several laws and amendments affecting state, municipal, and regional planning during the 2023 session, including the Housing Opportunities Made for Everyone (HOME) Act, Act 47 (S.100). The HOME Act amends several laws affecting state, municipal, and regional planning. As in past years, we are issuing this preliminary memo to inform local and regional officials of changes in statute and funding opportunities. The Department will develop and maintain a separate resource webpage to collect questions about the bill, post frequently asked questions, and issue guidance: <https://accd.vermont.gov/community-development/resources-rules/planning/HOME> .

The Vermont Statutes Online website is typically updated in October and does not include the prior session's changes until then.

The Department will issue an additional memorandum summarizing the other bills affecting municipal planning once the state budget is finalized. In compiling these updates, we owe thanks to the Vermont Planners Association's (VPA) legislative team and to the Vermont League of Cities and Towns' advocacy team (VLCT) for their companion legislative updates throughout the session, as well as the Vermont Association of Planning and Development Agencies (VAPDA).

PRELIMINARY SUMMARY

Act 47 (S.100) - Housing Opportunities Made for Everyone (HOME Act)

The Act amends the Planning and Development statute, Act 250, and other laws to enable new opportunities for housing development within state, regional, and local planning and development regulations.

The Act aims to address decades of state and local policies that have contributed to segregation and exclusion in Vermont. This legislation is an important part of a multi-pronged approach to mitigating the housing crisis, and every Vermont city and town can play a role in bringing about housing solutions, including ending unduly restrictive zoning. While some may find new ways to limit access and opportunities for more affordable homes and new neighbors, we hope cities and towns embrace the opportunity the new legislation offers to become more just and welcoming.

Currently, fifty-six municipalities in Vermont have received Bylaw Modernization Grants from the Department to expand housing opportunities. We expect the Budget Act will provide additional funding for new and revised bylaws through the Municipal Planning Grant and Bylaw Modernization Grant programs. We aim to announce these funding programs later this summer.

Effective Dates of the Act:

Effective upon passage: Section 46 on lead inspections

Effective July 1, 2023:

- Section 2, 1(D) on required provisions and prohibited effects for duplexes and small multiunit dwelling uses
- All other sections not otherwise listed below

Effective September 1, 2023: Section 3 on limited regulation of emergency shelters

Effective December 1, 2024:

- Section 1 on parking requirements
- Section 2, except 1(D), on other required provisions and prohibited effects (*H.171 of the 2023 Veto session would advance the effective date of this section to July 1, 2023*)

Sections 1-10 Municipal Zoning Reform

§1 – Minimum Parking Requirements: Amends 24 V.S.A. § 4414 (permissible types of regulation) In residential districts served by municipal sewer and water, municipalities cannot require more than 1 parking space per dwelling unit. But municipalities may

require 1.5 spaces for duplexes and multi-family dwellings in areas without sewer and water for multiunit dwellings if existing public parking is not sufficient, rounded to the nearest whole number when calculating the total number of required spaces for multi-unit dwellings.

§2 – Required Provisions and Prohibited Effects

Duplexes and small multiunit uses: Amends 24 V.S.A. § 4412 (required provisions and prohibited effects) Municipalities must allow anywhere single unit homes (also known as single-family or single-household dwellings) are allowed for year-round use. Municipalities must apply the same or less prohibitive dimensional standards to duplexes as would apply to a single unit dwelling. In areas served by municipal sewer and water, municipalities must allow multiunit dwellings with three or four units to be a permitted (not conditional) use.

Accessory Dwelling Units (ADUs) allowances: ADU review, dimensional, or other regulations must not be more restrictive than those for single-unit dwellings. For instance, if a single-unit dwelling is not subject to a special design review, the ADU may not be subject to design review. Also, the criteria to convert an existing detached nonresidential building (such as a carriage barn) to habitable space for an ADU must not be more restrictive than a single-unit dwelling without an ADU.

Hotels & Housing Assistance: Bylaws must not prevent or penalize hotels used to rent rooms with public funds for the purpose of providing Vermont General [housing] Assistance.

Dwelling unit density standards for allowed residential uses: In areas served by municipal sewer and water that allow residential development, bylaws shall establish lot and building dimensional standards that allow 5 or more dwelling units per acre for each allowed residential use and density requirements for multi-family cannot be more restrictive than those required for single-family dwellings.

Affordable housing and mixed used development density bonus: In municipal water sewer service areas that allow residential development bylaws must permit a dwelling unit density bonus of 40% and a bonus of one habitable floor above the height maximum.

§3 – Limited Regulation of Emergency Shelters: Amends 24 V.S.A. §4413 (limitations on municipal bylaws) Shelters must be regulated similarly to state or community-owned and operated institutions. Bylaws may not interfere with daily or seasonal hours of operation or otherwise interfere with the functional use of a shelter.

§4 – Definitions: Amends 24 V.S.A. § 4303 (definitions) to move the existing ADU definition from the ADU section to this section, establish a definition for a duplex, (to mean a two-unit dwelling with a shared wall or floor/ceiling), define emergency shelter (to

mean temporary shelter for homeless) and define multi-unit dwelling (to mean three or more dwelling units in same building).

Served by Water & Sewer Definition: amends definition to define "served by municipal water and sewer infrastructure" to mean an area where a connection is "available" to municipal water and direct or indirect wastewater system(s).

"Available" is not defined but could be interpreted as "possible" or "feasible" and not prohibited by State regulations and permits, known capacity constraints, or adopted service and capacity agreements. Municipalities can also establish specific service areas by ordinance or bylaw, provided they do not discriminate against year-round residential housing otherwise allowed. Such an ordinance may consider areas where year-round housing development conflicts with natural resource regulations, known service area prohibitions or limitations, areas served only to address public health hazards, mobile home parks outside areas planned for growth, and where year-round housing development is prohibited.

§5 – Preparation of Bylaws: Amends 24 V.S.A. §4441 (preparation of bylaws and regulatory tools) to enhance fair housing filing requirements for the State Plan & Bylaws Database and atlas to allow developers/researchers to go to one place for all adopted bylaws and access all zoning districts through the Vermont Open Geodata Portal. The Department is now in the process of updating procedures, forms and upload capabilities.

§6 – Limits on Local Appeals: Amends 24 V.S.A. §4465 (appeals of decisions of the administrative officer) adds "residents" to the list of potential individuals that may, in combination, appeal an appropriate municipal panel (AMP) decision with a 10-person petition. Depending on local governance, the AMP could be a planning commission, zoning board of adjustment, development review board, or legislative body (under interim zoning). The amendment also prohibits 10-person appeals for "character of the area" if the project has an affordable housing component.

§§6-7 – Subdivision Review: Amends 24 V.S.A. §4463 (subdivision review) to differentiate between major and minor subdivisions in bylaws to allow administrative officers to approve minor subdivisions. Municipalities may define "minor subdivision."

§9 – Character of the Area Appeals: Amends 24 V.S.A. §4471 (appeal to environmental division) to prohibit conditional use appeals when the AMP has determined the "character of the area" is met for residential development in some State designated areas (Downtowns, Growth Centers, and Neighborhood Development Areas). Other elements may be still appealed.

§10 – By Right Development Review: Amends 24 V.S.A. §4464(b) (appropriate municipal panel decisions) to require local boards to permit housing development as enabled in the bylaws with no restrictive modifications to projects. Developments that meet the requirements of bylaws and municipal standards, (along with any other permitting requirements) must be allowed. AMPs will no longer be able to require larger

lot sizes, require more parking spaces, limit the building size or height, or limit the density otherwise allowed by the bylaws except to meet a prerequisite permit. The section provides a mechanism for the AMP to deviate from the allowed standards with written findings that justify the adjustment.

§11 – Regional Plan: Amends 24 V.S.A. §4348a (elements of a regional plan) to direct DHCD to publish statewide and regional housing targets or ranges as part of the Statewide Housing Needs Assessment (conducted every 5 years) for use by the eleven regional planning commissions in the regional plan's housing element. Regional plans' housing elements must now estimate specific housing needs by municipality and recommend actions that meet needs as part of the 8-year planning cycle.

§12 – Municipal Plan: Amends 24 V.S.A. §4382 (the plan for a municipality) municipal plan requirements to strengthen the local housing element. As part of the 8-year planning cycle, the plan must look at data on year-round housing to recommend a program for public and private actions that meets the housing needs of low- and moderate-income households, as well as the required provisions and prohibited effects section of the Planning Act.

§13 – Adoption of Bylaws: Amends 24 V.S.A. §4442 (adoption of bylaws) to remove the 'rural town' provision. Rural towns may now adopt bylaws in the same manner as an urban municipality: by a majority of the members of the legislative body following hearing. The legislative body retains the option to vote to put the bylaws to a popular vote and the voters retain the ability to petition for a popular vote on the bylaws following legislative body action.

§14 – Municipal and Regional Planning Fund: Amends 24 V.S.A. §4306 to allow DHCD to utilize 20% of the appropriated property-transfer tax funding for a new technical assistance and navigation program to help municipalities determine readiness and apply for neighborhood development area designation. DHCD intends to hire consultants on retainer for this purpose and will develop procedures for interested municipalities. DHCD may, in its discretion, allocate the remaining 80% of the funds between the bylaw modernization grants (BMG) and municipal planning grants (MPG). DHCD intends to run the BMG and MPG programs on a tandem timeline with an announcement this summer.

§§15-15a. – Regional Planning Report: the Vermont Association of Planning and Development Agencies (VAPDA), representing Vermont's regional planning commissions, is directed to produce a report by December 15, 2023 on statutory recommendations to better integrate municipal, regional and state plans, and policies. VAPDA must also hire housing resource navigators to work with municipalities and regional organizations to find funding and identify housing opportunities (pending funding availability).

§§16-16a – Act 250 Definitions: Amends 10 V.S.A. §6001 to temporarily raise the Act 250 jurisdictional threshold for housing units from 10 to 25 in Designated Downtowns,

Neighborhood Development Areas, Growth Centers, and Villages with permanent zoning and subdivision regulations and allow any size Priority Housing Project (PHPs) within Designated Downtowns, Neighborhood Development Areas, and Growth Centers. Projects not completed before July 1, 2026 deadline can preserve the exemption by seeking a jurisdictional opinion before June 30, 2026 (the project must be substantially complete before June 30, 2029 to remain exempt). The amendment also treats the construction of four or fewer units in an existing structure as only one unit for the purposes of calculating the total number of units.

§17 – Master Plan Permits: Amends 10 V.S.A. §6086b (downtown development; findings; master plan permits) so municipalities can apply for master plan permit(s) for all of, or an area within, a Designated Downtown or Neighborhood Development Area. Subsequent development of lots within the area will only require permit amendments once a master plan permit is in place. Permit amendments in Neighborhood Development Areas will only be issued for housing development.

§18 – Act 250 Fees: Amends 10 VSA §6083a (Act 250 fees) to cap permit fees for individual permit or permit amendments, including portions of projects involving master plans, at \$165,000.

§18a – Act 250 Permit Delegation Report: Directs VAPDA, in consultation with the Natural Resources Board (which administers Act 250), to develop a proposed framework to delegate Act 250 administration to municipalities. The report is due by December 31, 2023.

§19 – Act 250 Changes Report: Amends the existing report established in Act 182 §41 (due on December 31, 2023) to additionally review the effects that changing the jurisdictional threshold 10 to 25 housing units statewide might have on housing affordability, home ownership, and natural resources.

§19a – Designated Area Report: Extends the report deadline to study the State's designation programs to December 31, 2023. DHCD is currently working with a consultant on evaluation, outreach, and recommendations to modernize the designation programs.

§19b-d – Act 250 Exemption for Electric Distribution Work: Exempts work and upgrades to existing utility lines and corridors from Act 250. Other permit processes (including §248 still apply). This exemption sunsets January 1, 2026. Any utility that uses this exemption between January 15, 2024, and 2026 must report to the House Committee on Environment and Energy and the Senate Committees on Finance and Natural Resources.

§20 – Covenants & Deed Restrictions: Amends 27 V.S.A. § 545 (covenants, conditions and restrictions of substantial public interest) to invalidate any deed restrictions or covenants established after July 1, 2023 if they establish minimum dwelling unit size or require more than one parking space per unit (if in an area served

by water and sewer), or more than 1.5 parking spaces for duplexes and multiunit dwellings in areas not served by water and sewer.

§21 – Class 4 Road Disclosure: Amends 27 V.S.A § 617 to require property owners to disclose to potential buyers if the property is on a class 4 highway or legal trail that is not required to be maintained by the municipality.

§§22-23 – Building Energy Code Study Committee: Creates a 15-member committee to study and recommend strategies to increase awareness of and compliance with State residential and commercial building energy standards with assistance from the Department of Public Service. The work will begin before July 15, 2023, and the report is due December 1, 2023.

§24 – Rural Recovery Coordination Council: Creates a 14+ member council to study ways to strengthen capacity and coordination between agencies and stakeholders involved in rural community development. Administrative support will be provided by the Vermont Council on Rural Development (pending budget approval), and the report is due December 15, 2023.

§25 – Agency of Natural Resources (ANR) Review of Water & Wastewater Connection Permits: Directs ANR to study the statutory and regulatory requirements and administrative processes governing issuance of potable water and wastewater connection permits to identify ways to streamline the process and reduce any duplicated effort on the municipal or state level. ANR will consult with DHCD, municipalities, engineers, licensed designers, and environmental organizations on alternative approaches. Report due January 31, 2025.

§25a – Utility Disconnection & Landlord Notification Rulemaking: Directs the Public Utilities Commission (PUC) to revise rules regarding utility service disconnections to require utilities to notify property owners if utility service to the property has been disconnected, even if the tenant is the ratepayer. This would include water and sewer services provided by municipality, fire district, or private company. Also allows remote disconnect by utility. Draft legislation that incorporates the rules is due January 1, 2024.

§26 – Accessory Dwelling Unit (ADU) Jurisdiction: Amends 20 V.S.A. § 2730 to clarify that ADUs that are not rented are not 'public buildings' and not subject to State Fire Safety Code Compliance and inspection.

§27 – Deleted

§28 – Criminal Penalty for Fair Housing/Human Rights Violation: Amends 9 V.S.A. 4507 to increase potential penalty from \$1,000 to \$10,000.

§29 – Fire & Building Safety Report: Requires the division to prepare a report identifying potential revisions to the Vermont Fire and Building Safety Code to increase construction of new and converted residential units. Report due January 15, 2024.

§30 – Deleted

§§31-45 – Programs

§31 – Homesharing Program: Directs DHCD to develop a home-sharing program, pending funding.

§32 – Mobile Home Park Task Force: Creates a multi-agency and stakeholder task force to be led by an appointed member of the House of Representatives to evaluate Vermont's mobile home park statute and the status of mobile home parks and mobile homes in the state. Funding is pending.

§§33-34 – First Generation Homebuyer Program: Amends existing program administered by the Vermont Housing Finance Agency to expand potential usership. Future funding is to be determined (TBD).

§§35-37 – Missing Middle Homeownership Program: Revises the existing missing middle program administered by the Vermont Housing Finance Agency (VHFA). Future funding TBD.

§§38-39 – Rental Housing Revolving Loan: Directs VHFA to create a revolving loan program to develop rental housing stock. Funding TBD.

§§40-41 – Vermont Rental Housing Improvement Program (VHIP): Revises existing VHIP program, administered by the Department of Housing and Community Development (DHCD) in partnership with the homeownership centers (HOCs), to allow for both grants and loans. Future funding TBD.

§42 – VHCB Appropriation: Appropriation to the Vermont Housing Conservation Board (VHCB) for mixed-income and affordable housing development. Funding TBD.

§43 – Rental Housing Stabilization Services: Directs Champlain Valley Office of Economic Opportunity to create and implement a rental housing stabilization program to provide technical assistance for tenants and landlords to access other funding opportunities. Funding TBD.

§44 – Tenant Representation Pilot Program: Directs Vermont Legal Aid to create and implement a two (2) year pilot program for tenant representation in eviction cases. Funding TBD.

§45 – Rent Arrears Assistance Fund: Directs the Vermont State Housing Authority (VSHA) to create and implement a rent arrears program to assist eviction prevention for cases of non-payment of rent. Funding TDB.

§46 – Lead Inspection: Owners of rental target housing who perform work under 18 V.S.A. § 1764 are exempt from needed a license and liability insurance. Effective on passage.

§47 – Effective Dates (see above)

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

