

The State of Local Land Use Regulations in New Hampshire – 2020 Update

Noah Hodgetts, Assistant Planner, NH Office of Strategic Initiatives

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RSA 675:9 establishes the New Hampshire Office of Strategic Initiatives (OSI) as the state repository for all local land use regulations including master plans, zoning ordinances, historic district ordinances, capital improvement plans, building codes, subdivision regulations, historic district regulations, and site plan review regulations. RSA 675:9 also authorizes OSI to conduct an annual survey of all municipalities in order to collect information pertaining to new and/or amended land use ordinances. This article highlights the results of the 2019 survey, which was completed by all, but five of the state's 234 municipalities¹ as well as nine village districts with zoning authority and Coos County, which has zoning authority over 23 unincorporated places in the North Country. In addition, this article summarizes zoning amendment updates submitted by 130 communities after their 2020 Annual Town Meetings.

The survey includes those municipalities that lack traditional zoning ordinances, as several have other types of land use regulations including residential subdivision regulations, non-residential site plan review regulations, a wireless telecommunications ordinance, sign regulations, and/or a drinking water protection ordinance. Several of the municipalities that lack traditional zoning ordinances are also participating communities in the National Flood Insurance Program and have separate floodplain development ordinances, which are tracked by our office's State Floodplain Management Program separate from this survey.

2020 Summary

Aside from the usual definition changes and other routine zoning amendments passed to make sure municipal zoning ordinances are consistent with recent state statute changes, 2020 was a year in which communities passed a slew of other zoning changes ranging from wetland conservation ordinance updates to sign ordinance changes. Overall, 130 communities (60%) adopted zoning amendment updates, the vast majority of which were adopted through the Annual Town Meeting process. Of particular note, in 2020 10 communities amended their Accessory Dwelling Unit (ADU) ordinances to allow detached units, 4 communities adopted or expanded their workforce housing ordinances, 11 communities adopted short-term rental regulations, 17 communities adopted definitions for solar arrays or a solar energy systems ordinance, and 4 communities adopted 79-E, which provides property tax relief to encourage investment in rehabilitation of underutilized buildings in downtowns and town centers.

Accessory Dwelling Units

202 communities have adopted a provision in their zoning ordinance regulating Accessory Dwelling Units (ADUs) since RSA 674:71-73 went into effect on June 1, 2017; an increase of 8

¹ For the five communities that did not return their 2019 survey, OSI reviewed their 2019 Annual Report and 2020 Town Meeting Warrant and added applicable information on their behalf to the survey results.

communities from the 2018 survey. RSA 674:71-73 requires communities that have adopted a zoning ordinance to allow ADUs in single-family residential zoning districts as-of-right, by special exception, or conditional use-permit to encourage the development of additional housing on single-family house lots. However, of these 202 communities, 169 communities require the principal dwelling unit or the accessory dwelling unit to be owner-occupied and only 96 communities allow accessory dwelling units in structures which are detached from the principal dwelling unit (an increase of 10 communities from the 2018 survey). Just under half of the communities that regulate accessory dwelling units permit them as-of-right, while the other half requires obtaining a conditional use permit or special exception.

Workforce Housing

Among New Hampshire's 234 municipalities, 70 communities explicitly allow workforce housing, including 27 communities who have workforce housing multi-family overlay districts in accordance with the state's workforce housing law, RSA 674:58-61². RSA 674:58-61 requires any municipality which exercises the power to adopt land use ordinances and regulations to provide reasonable and realistic opportunities for the development of workforce housing including rental multi-family housing in their ordinances and regulations. The majority of the communities that have adopted workforce housing ordinances are located in Southern New Hampshire, on the Seacoast and in the Mount Washington Valley, where housing-cost pressures are the greatest.

However, only 48 of these communities have an inclusionary zoning clause in their workforce housing ordinance, which allows a developer to construct units at a greater density than otherwise allowed, in exchange for setting aside a set percentage of units (usually between 10 – 20%) as affordable. At the same time, many of these same communities in Southern New Hampshire and the Seacoast also levy impact fees (86 communities) and/or have enacted growth management ordinances (23 communities). 78 communities also employ age-restricted housing regulations which typically limit residential development in certain areas to persons over age 55 or 62.

In 2020, several suburban communities including Amherst, Henniker, Hollis, Newfields, and Pelham repealed or limited the incentives for workforce housing as well as open space subdivisions, many by successful citizen petition. These communities continued a trend observed in 2019 in which communities including Bedford and Peterborough limited the areas in which higher density workforce housing is allowed. In 2020, South Hampton also instituted a new

² RSA 674:58, IV defines workforce housing as housing that is affordable (i.e. housing costs do not exceed 30% of a household's gross annual income) to 3-person household's earning at or below 60% of Area Median Income for rental units and 4-person households earning at or below 100% of Area Median Income for ownership units.

growth management ordinance while Chester and North Hampton voted down expanded incentives and requirements for workforce housing.

However, a handful of suburban/rural communities did pass expanded workforce housing related ordinances in 2020. Hopkinton created a new Commerce and Community Overlay District in the West Hopkinton area to help incentive more affordable housing and mixed use development in a formerly underutilized industrially zoned area of the town, which was a result of the town's recent involvement in the Municipal Technical Assistance Grant (MTAG) program (Town of Hopkinton Zoning Ordinance, Section XIX, March 2020). Conway passed an Affordable Housing Ordinance, which provides density bonuses for developments which include at least 25% workforce housing on lots served by municipal water and sewer (Town of Conway Zoning Ordinance, Chapter 195, May 2020). Newington also created a workforce housing overlay district covering three parcels.

Several, larger urban communities also adopted zoning changes to encourage mixed-use, higher density development and workforce housing in their downtowns including Dover, Exeter, Farmington, and Rochester.

Short-Term Rentals

With the explosion of short-term rentals in recent years in areas of the state popular with tourists including the Mount Washington Valley/White Mountain Nation Forest and Seacoast regions, in 2020 many communities sought to catch up with this trend. In 2020, 11 communities added definitions for short-term rentals or short-term rental regulations, more than doubling the number of communities that regulate short-term rentals, bringing the number of communities with short-term regulations to 20. Communities that added language pertaining to short-term rentals to their zoning ordinance in 2020 include Canterbury, Conway, Dublin, Hanover, Jackson, Laconia, Lincoln, Littleton, Seabrook, Thornton, and Whitefield.

Solar Energy Ordinances

More and more communities are adopting comprehensive solar energy systems ordinances to regulate roof and ground mounted solar arrays. In 2020, 17 communities adopted definitions for solar arrays or a solar energy systems ordinance, a nearly 60% increase in the number of communities regulating solar arrays, bringing the number of communities with solar energy regulations to 48. As the size and complexity of solar arrays has grown in recent years, communities have adopted increasingly comprehensive solar energy systems ordinances which address everything from lot coverage and buffers to decommissioning.

RSA 79-E, Community Revitalization Tax Relief Incentive

The Community Revitalization Tax Relief Incentive Program, better known as 79-E, which encourages rehabilitation of underutilized buildings in downtowns, town, and village centers through the provision of local property tax relief, has become an increasingly popular economic development tool used by municipalities. To date 59 communities have adopted 79-E with

Greenland, Kingston, Stratford, and Waterville Valley becoming the newest communities to adopt the program in 2020.

Mixed-Use Zoning

While single-use Euclidean zoning, which separates residential, commercial, and industrial uses, remains the dominant type of zoning throughout the state, 140 communities have created mixed-use zoning districts usually in their downtowns or village centers which allow for residential, commercial, and retail uses to be located either in close proximity to each other or within the same structure. In 2020, Greenland formed a new mixed-use zoning district while Whitefield created a new village district zone. Candia, rejected the creation of the Four Corners Mixed-Use Village District.

Open-Space Residential (Cluster) Development

177 communities allow open-space residential cluster developments in accordance with RSA 674:21(I)(f) where homes are usually spaced closer together than allowed through a traditional subdivision, in exchange for permanently protecting a percentage of open space, an increase of 5 communities from the 2018 survey. 70 of these communities provide a density bonus for developments that conserve more than the minimum required amount of open space. Open-space residential (cluster) developments typically require a minimum of 25-plus acres. However, Greenfield and Plaistow took the unusual step of decreasing the minimum lot size required for open space residential developments in 2020.

Final Thoughts

A few final notable observations from the 2019 - 2020 survey include:

- Two communities currently without comprehensive, traditional zoning ordinances, Dalton and Rumney, are in the process of drafting zoning ordinances, which will be voted on at Annual Town Meeting in Spring 2021. In July 2019, the Town of Dalton adopted an Emergency Temporary Zoning and Planning Ordinance pursuant to RSA 674:24-29.
- 163 communities have developed quantifiable performance based standards in their zoning ordinance (an increase of 3 communities from the 2018 survey), a flexible alternative to traditional use-based zoning which typically regulates site standards and intensity of use. Performance based standards have most commonly been adopted for the regulation of telecommunications towers/equipment and wind energy systems.
- Six communities have gone a step further and created form-based codes for some or all of their community, which regulate the character and physical form of an area rather than specific uses. The cities of Concord and Keene are in the middle of rezoning efforts that will result in the transition to a form-based zoning code in these communities.
- In 2020, several communities adopted zoning changes to accommodate outdoor dining and expanded home occupations in response to the COVID-19 pandemic.

- Aside from use-based zoning, the most prevalent planning and development technique which communities in New Hampshire utilize is the regulation of signs. 217 out of 226 zoning jurisdictions have adopted some form of sign ordinance regulating type, size, lighting, content, an increase of two communities from the 2018 survey.
- Keene became the first community in the state in May 2020 to regulate small wireless facilities in public right-of-ways necessary for the deployment of 5G cellular networks.
- 31 communities have adopted master plan updates since the beginning of 2019 with an increasing number adopting master plan chapters which deviate from the master plan chapters enumerated in RSA 674:2. Such new emerging master plan topics include broadband, community health, climate change, and the arts.

As this article demonstrates, based on reported survey results, while some communities rolled back incentives for workforce housing in 2020, many are utilizing innovative planning and zoning approaches to meet their communities' current needs, while planning proactively for the future.

The complete results and full analysis of the 2019 – 2020 Municipal Land Use Regulation survey are available at <https://www.nh.gov/osi/planning/services/mrpa/land-use-survey.htm>.