

## **The State of Local Land Use Regulations in New Hampshire – 2022 Update**

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RSA 675:9 establishes the New Hampshire Office of Planning and Development (OPD) within the Department of Business and Economic Affairs (BEA) 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 OPD 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 2022 survey, which was completed for all of the state's 234 municipalities as well as nine village districts with zoning authority, Coos County, which has zoning authority over 23 unincorporated places in the North Country, and the Pease Development Authority which has zoning authority over Pease International Tradeport in Newington and Portsmouth. In addition, this article summarizes the zoning updates that were approved by 144 jurisdictions in 2022.

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.

### **2022 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, in 2022 communities passed a slew of zoning changes ranging from open space subdivision/cluster ordinance updates to sign ordinance changes. Overall, 144 jurisdictions out of 226 of those that have zoning (64%) adopted zoning amendment updates the vast majority of which were adopted through the Annual Town Meeting process. One (1) community (Groton) adopted a comprehensive Zoning Ordinance in 2022. Of particular note, in 2022 4 communities amended their Accessory Dwelling Unit (ADU) ordinances to allow detached units, 5 communities adopted or expanded their workforce housing ordinances, 13 communities added a definition or adopted short-term rental regulations, 11 communities adopted definitions for solar arrays or a solar energy systems ordinance, and 1 community adopted 79-E, which provides property tax relief to encourage investment in rehabilitation of underutilized buildings in downtowns and town centers.

### **Accessory Dwelling Units**

206 jurisdictions 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 one jurisdiction from the 2021 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 206 jurisdictions, 175 jurisdictions require the principal dwelling unit or the accessory dwelling unit to be owner-occupied and only 109 jurisdictions allow accessory dwelling units in structures which are detached from the principal dwelling unit (a net increase of 5 jurisdictions from the 2021 survey). Half of the jurisdictions that regulate accessory dwelling units permit them as-of-right, while the other half requires obtaining a conditional use permit or special exception. 20 jurisdictions differentiate between how they permit attached and detached ADUs (typically attached ADUs are allowed as-of-right and detached ADUs require obtaining a conditional use permit or special exception).

### **Housing, Workforce/Affordable Housing**

Among New Hampshire's 234 municipalities, 76 communities explicitly allow workforce housing, including 30 communities who have workforce housing multi-family overlay districts in accordance with the state's workforce housing law, RSA 674:58-61<sup>1</sup>. 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. Most of the communities that have adopted workforce housing ordinances are in Southern New Hampshire, the Seacoast, the Mount Washington Valley, and the Upper Valley where housing-cost pressures are the greatest, but increasingly more rural communities facing a growing workforce and housing shortage have also considered adoption of workforce housing ordinances.

However, only 50 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 (22 communities). 78 communities also employ age-restricted housing regulations which typically limit residential development in certain areas to persons over age 55 or 62.

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<sup>1</sup> 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.

In 2022 some communities including Brookline tightened their workforce housing regulations. Hudson, Brentwood removed age-restricted housing regulations, while others including Greenland, Pelham, Chesterfield passed expanded workforce housing ordinances or adopted age restricted regulations. New Boston adopted Workforce Housing regulations in 2022 and allowed increased density by Conditional Use Permit for certain properties if they meet set criteria, and Hanover introduced a new use for affordable non-profit provided housing to several of its Districts. Pelham expanded workforce housing to be allowed in all districts that allow residential uses except for the Rural District. Kensington allowed additional density for Open Space subdivisions to go over the required maximum if there is affordable housing proposed. Amherst amended its Planned Residential Development regulations including allowing density bonus (up to 25%) by Planning Board decision. Claremont voted to allow increased maximum density in Residential District II for multiple units on a single lot. Greenland amended its age-restricted housing ordinance to include affordable housing provisions.

Brookline limited workforce housing to a maximum of 3-4 dwelling units only along the Route 13 corridor and removed an allowance for a reduction of the minimum lot size up to 25% per unit for workforce housing. Brookline also reinstated its Growth Management Ordinance in 2022 and Bow deleted Duplex and Multi-Family residential uses altogether in its Rural and Residential districts.

### **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, Lakes Region, and Seacoast, in 2022 13 communities added definitions for short-term rentals or short-term rental regulations, increasing the number of communities that regulate short-term rentals to 41. Communities that added language pertaining to short-term rentals to their zoning ordinance in 2022 include Barnstead, Easton, Eaton, Exeter, Frankestown, Gorham, Groton, Lisbon, Meredith, Monroe, New Hampton, Newport, and Northfield.

### **Solar Energy Ordinances**

More and more communities are adopting comprehensive solar energy systems ordinances to regulate roof and ground mounted solar arrays. In 2022, 4 communities adopted definitions for solar arrays or a solar energy systems ordinance, bringing the number of communities with solar energy regulations to 63. 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 66 communities have adopted 79-E with Greenville becoming the newest communities to adopt the program in 2022.

### **Mixed-Use Zoning**

While used-based Euclidean zoning, which separates residential, commercial, and industrial uses, remains the dominant type of zoning throughout the state, 147 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 near each other or within the same structure. In 2022, Milton added a Gateway Business Overlay District Ordinance allowing for mixed use development along other commercial uses, and Stratham replaced its Flexible/Mixed Use Development District Ordinance in its entirety to clarify land uses and requirements.

### **Open-Space Residential (Cluster) Development**

180 jurisdictions allow open-space residential (or 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 one community from the 2021 survey. Many 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. In 2022, Andover adopted an Open Space Residential Development ordinance which allows for a variety of density bonuses for parent parcels over 20 acres under certain conditions, while Newbury amended its Cluster Development regulations by removing the requirement that it be purely residential and adding non-residential uses where permitted by underlying district (although this was only amended via the purpose statement of the Cluster Development regulations and not the regulations themselves).

### **Final Thoughts**

A few final notable observations from the 2022 survey include:

- One community, Groton, currently lacking traditional zoning adopted a comprehensive, traditional zoning ordinance after rejecting adoption of a similar ordinance in 2019. However, the Town of Dalton, whose Emergency Temporary Zoning and Planning Ordinance expired in June 2022, was unsuccessful in its effort to adopt a permanent comprehensive, traditional zoning ordinance.
- 164 jurisdictions have developed quantifiable performance-based standards in their zoning ordinance, 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.

- Eight communities have gone a step further and adopted form-based codes for some or all their community, which regulate the character and physical form of an area rather than specific uses.
- In 2022 some communities continued classifying rental related activities as home occupations. In Easton the definition of home occupation was modified to allow rental of one or two rooms up to a total of three guests in an owner-occupied home and in Groton short term rentals as well as long term rentals are allowed by-right, but are a considered a home business and must follow home business regulations in the ordinance.
- Aside from use-based zoning, the most prevalent planning and development technique which communities in New Hampshire utilize is the regulation of signs. 219 out of 226 zoning jurisdictions have adopted some form of sign ordinance regulating type, size, lighting, content.
- 57 communities have adopted master plan updates since the beginning of 2020 (18 of them updating their Master Plan in 2022) 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 jurisdictions rolled back incentives for workforce housing in 2022, 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 2022 Municipal Land Use Regulation survey are available at <https://www.nheconomy.com/office-of-planning-and-development/what-we-do/municipal-and-regional-planning-assistance/municipal-land-use-regulation-annual-survey>.