

S.237

An act relating to promoting affordable housing

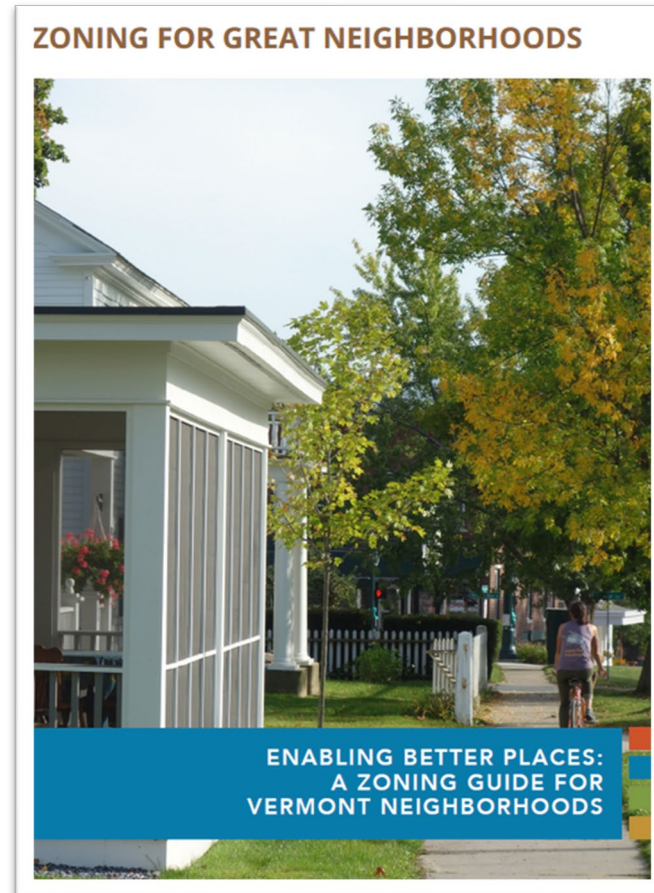
photo credit: Jason Duquette-Hoffman, Town of Middlebury



Jacob Hemmerick, Planning & Policy Manager
VT Dept. of Housing & Community Development

September 4, 2020
HCGHMA

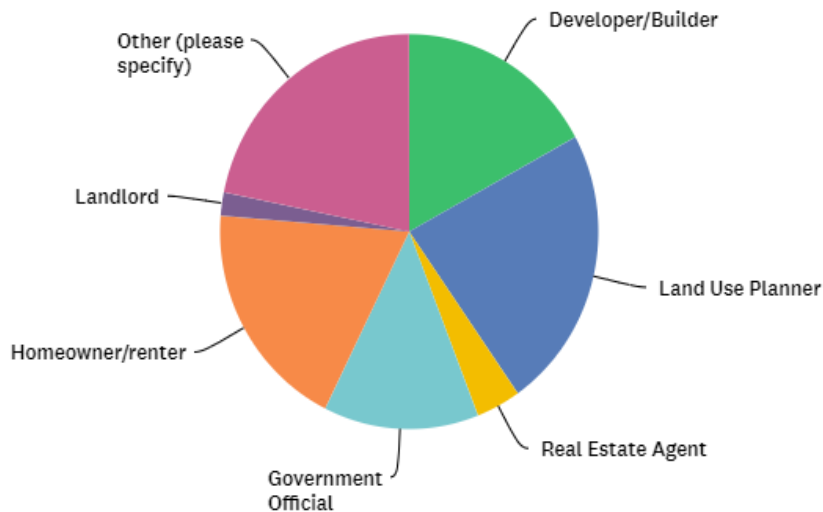
Municipal Zoning Reforms & DHCD



- *Two DHCD initiatives are focused on and have highlighted the **strong need for voluntary local zoning reforms** documented in planning, studies, and reports over the past few decades.*
- *Zoning essentially says what can happen where.*

Zoning for Great Neighborhoods Survey

Question: What factors make it difficult to achieve those housing needs in walkable places (downtowns, villages & surrounding neighborhoods)?



Ranking

Lack or high cost of available real estate	1
High construction costs	2
People resisting change in their neighborhoods	3
Municipal zoning/land use regulations – processes and requirements	4
Act 250 processes and requirements	5
Lack of water/wastewater services or insufficient capacity	6
Lack of affordable financing	7
Health, safety or energy code requirements	8

Total Responses **212**

Accessory Dwelling Unit (ADU)

How-To Checklist

Vermont Department of Housing & Community Development

June 2020

WHAT IS AN ADU?

Vermont's Planning Act (24 V.S.A 4412) defines ADU to mean "one accessory dwelling unit that is located within or appurtenant to an owner-occupied single-family dwelling. An accessory dwelling unit means an efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation."

OVERVIEW OF CHECKLIST

BACKGROUND RESEARCH

- ADU Types
- Water/Wastewater Service
- Covenants, Deed & Mortgage Restrictions

REGULATIONS & PERMITS

- Municipal Zoning Permit
 - Conditional Use Review
 - Design & Historic Preservation Review
 - Flood Hazard & River Corridor
 - Certification of Permit
 - Manufactured Housing Installation Form
- Municipal Highway Access Permit
- Municipal Water/Sewer Permit
- Municipal Building/Electrical/Plumbing Permit
- Municipal Impact Fees
- Municipal Assessment & Property Taxation
- E-911 Address
- Municipal Rental Registry

- State Construction Permit
- State Electrical & Energizing Permits
- State Plumbing Permit
- State Water/Wastewater Permit
- State Residential Building Energy Standards
- Act 250
- State Rental Housing Safety Code
- State Hazard Mitigation: Lead Paint & Asbestos
- State STR Health, Safety & Rooms Taxes

IMPLEMENTATION & OPERATION

- Design
- Construction Cost Estimates
- Lender Financing
- Utilities
- Contracting & Permits
- Homeowner Insurance
- Budgeting, Accounting & Income Tax Obligations
- Landlord/Tenant Legal Obligations

ADUs can help address the acute need for smaller and more affordable homes in Vermont and can help families navigate changing housing and financial needs, but creating an ADU can be complicated in the state's fragmented system of development and rental housing oversight.

The to-do list summarized above and detailed below identifies items you may need for creating an ADU. The permits and steps all have important functions but taken as a whole, can make the process difficult, expensive or even impossible.

To understand how certain permitting structures can make even the smallest-scale, incremental development difficult, look over the Department's:

Accessory Dwelling Unit Checklist

Vermont's Housing Market is Very Strained

Vermont's housing supply is mismatched with demands, and the needs of Vermonters, struggling to afford housing.

- Vermont's housing stock is very old, often needing major investment – especially in and around older centers
- Individual household sizes are decreasing
- Total number of households increasing
- Population aging
 - Two key age cohorts: boomers & millennials (increasingly competing for the same units: convenient, walkable, small, affordable, and easy-to-maintain)
- More new housing being developed outside of centers than inside; increasing fragmentation of working lands
- Affordability & supply reportedly strained by COVID migration/demand

S.237 | Sec. 2 | Municipal Zoning Reforms

Zoning Can Mandate Unaffordable Homes & Exclude

- × **Require more land area per dwelling**
- × **Require more land area per lot**
- × **Limit the types of dwellings that can be built (such as duplexes or accessory dwellings)**
- × **Limit where diverse dwellings can be built to a narrow or less desirable geography**
- × **Make certain types of development subject to discretionary reviews so permitting is less predictable and more likely to be appealed by high-resourced neighbors**
- × **Restrict development in water/sewer service areas with supply & treatment capacity**
- × **Require more parking per dwelling**
- × **Require development in places where new infrastructure is needed instead of building where infrastructure already exists**

Exclusion Affects Vermonters



**The Planning Act's Past Work on Fair
Housing Has Asked:
*How can Vermont expand opportunity
and affordability?***

S.237 | Sec. 2 | Municipal Zoning Reforms

The Planning Act Places Limits Local Zoning

Such as limitations on the regulation of:

- Mobile Homes
- Multi-family Dwellings
- Accessory Dwellings
- Residential Care Homes
- Home Occupations
- Childcare Facilities
- Public Facilities
- Renewable Energy Structures
- And more

What would S.237 do?

Which municipalities would it impact?

Section 1 addresses water & wastewater mapping in the municipal plan.

Section 2 adds new limits for inclusive housing reform (effective 2023) with a municipal opt-out. Opting out would result in a loss of existing and new incentives, such as State grants and tax credits.

Section 3 extends new authority to municipalities to stop covenants that prevent substantial public interests.

Similar actions in this area have blocked discriminatory covenants or covenants that prevent renewable energy devices, like clotheslines.

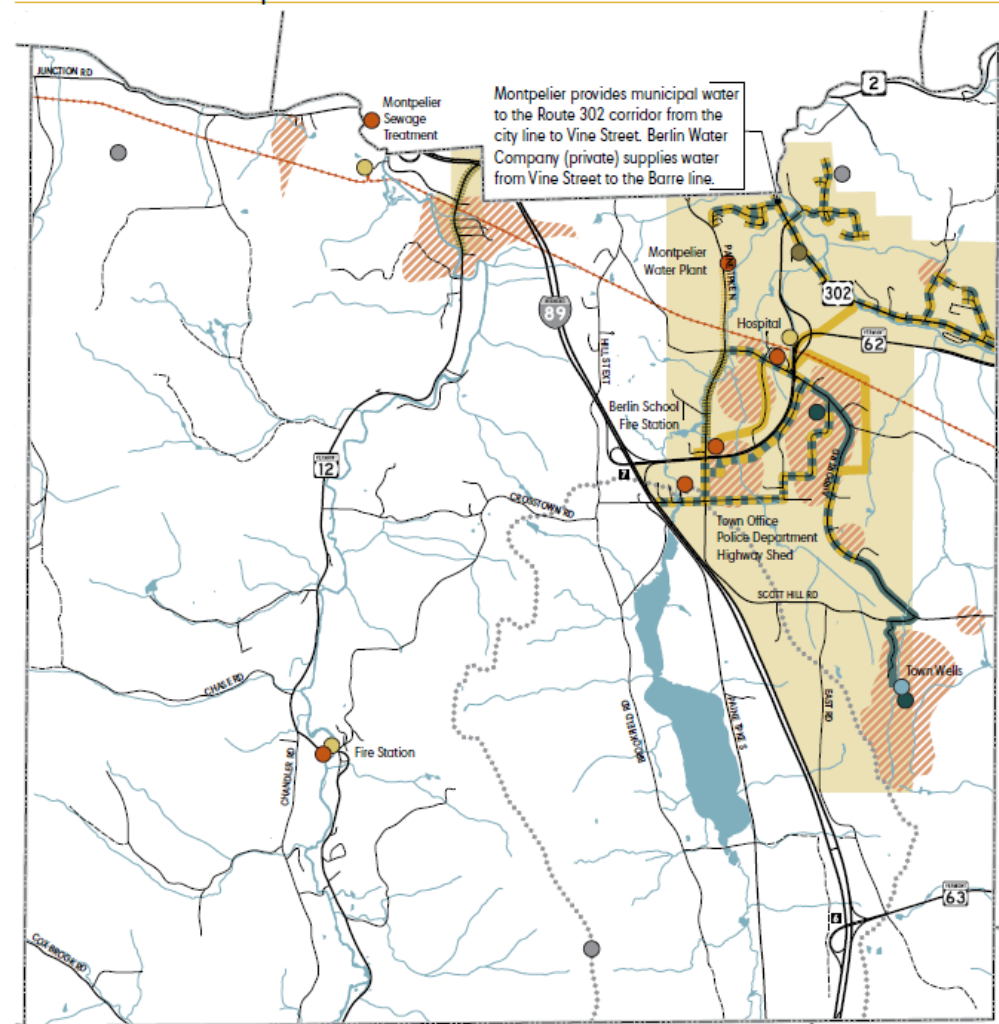
Requires Mapping of Water & Wastewater in Municipal Plan

- Coordinating water & sewer investments with land use planning and regulation drives affordability (for energy, public services, housing and more).
- **When water or sewer goes in, development pressure typically follows.**
 - Water & sewer enables smaller lots (less land than would be needed for a well and on-site septic), but ...
 - Zoning that mandates low densities in areas served by water and sewer typically results in auto-oriented sprawl
- Water supply and sewage disposal mapping requirement is already in statute, but with less specificity than proposed.
- Some municipalities already do this; others have bioterrorism concerns about sharing this information with the public.

Example Municipal Plan Future Facilities Map: Berlin, VT

- ✓ Existing water
- ✓ Existing sewer
- ✓ Planned water
- ✓ Planned sewer
- ✓ Service area
- ✓ Water source protection area

Utilities and Facilities Map



KEY

	Existing municipal water		Telecommunication tower		Planned water and sewer service area
	Existing municipal sewer		Substation		VELCO transmission line
	Existing municipal water and sewer		Water tower		Groundwater source protection areas
	Existing municipal water & planned sewer		Pump station		Surface water source protection areas
	Planned municipal water & sewer		Municipal or civic facility		
	Planned municipal sewer				

SOURCE
 2017 4911 Sites, VCGI
 2018 Berlin town infrastructure mapping
 2003, VT Electric Transmission Line Corridors
 2018 Source Protection Areas, VTNR

See Commercial and Industrial Areas (page 28) for more information on the availability of three-phase power in the northeast quadrant and Public Water Systems (page 22) for more information on public water supplies and their source water protection areas.

Statewide Mapping Status for Water & Wastewater

As a planning practice, mapping generally improves permit predictability, public asset management, and public transparency.

Reliable statewide data available:

- ✓ Municipalities that plan
- ✓ Municipalities that regulate land use
- ✓ Municipalities operating a sewer system
- ✓ General service areas of sewer systems

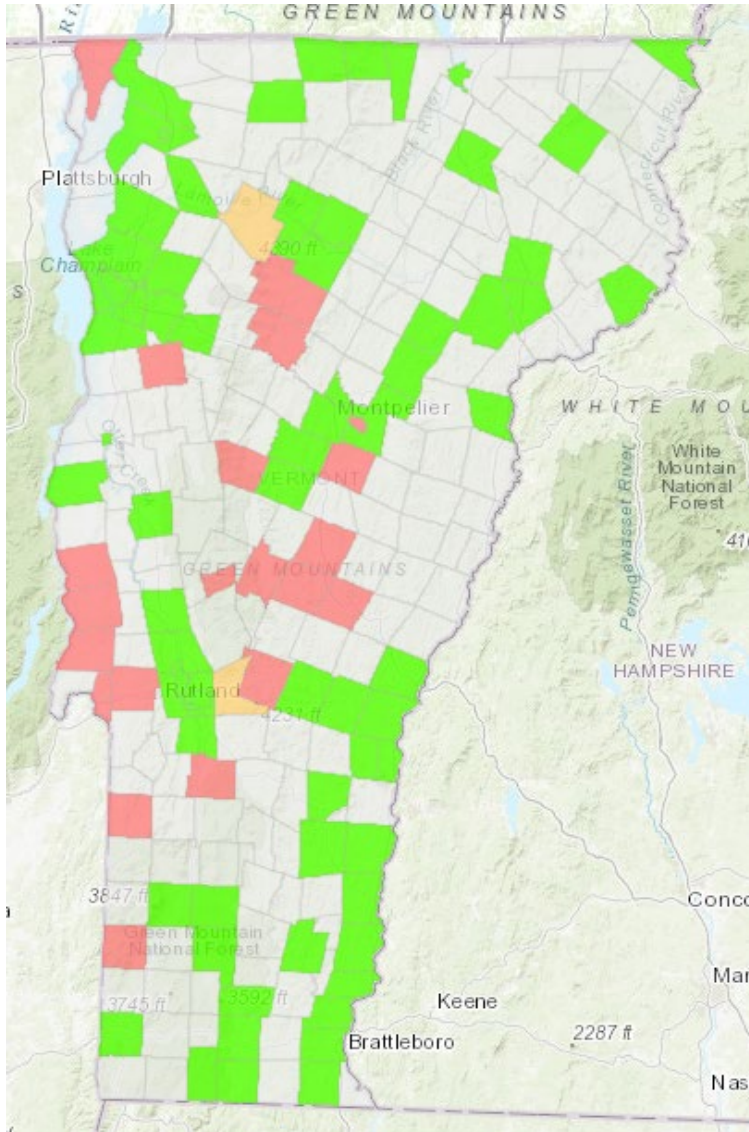
Data gaps:

- ✗ Municipalities (not fire districts) that operate a water system
- ✗ Consistently mapped municipal water service areas
- ✗ Water system constraints
- ✗ Sewer system constraints

Statewide Mapping of Wastewater

94 Municipalities Operate Wastewater Systems

(ANR Data)



Detailed Wastewater

Mapping Status



Completed



Partially Completed



Not Completed



No Municipal Wastewater Systems

Statewide Mapping of Wastewater

83 of Those Regulate Land Use

Town Plan & Bylaws

Regulation Status

(DHCD data)

Zoning Adopted

Subdivision Adopted

Unified Adopted

Detailed Wastewater

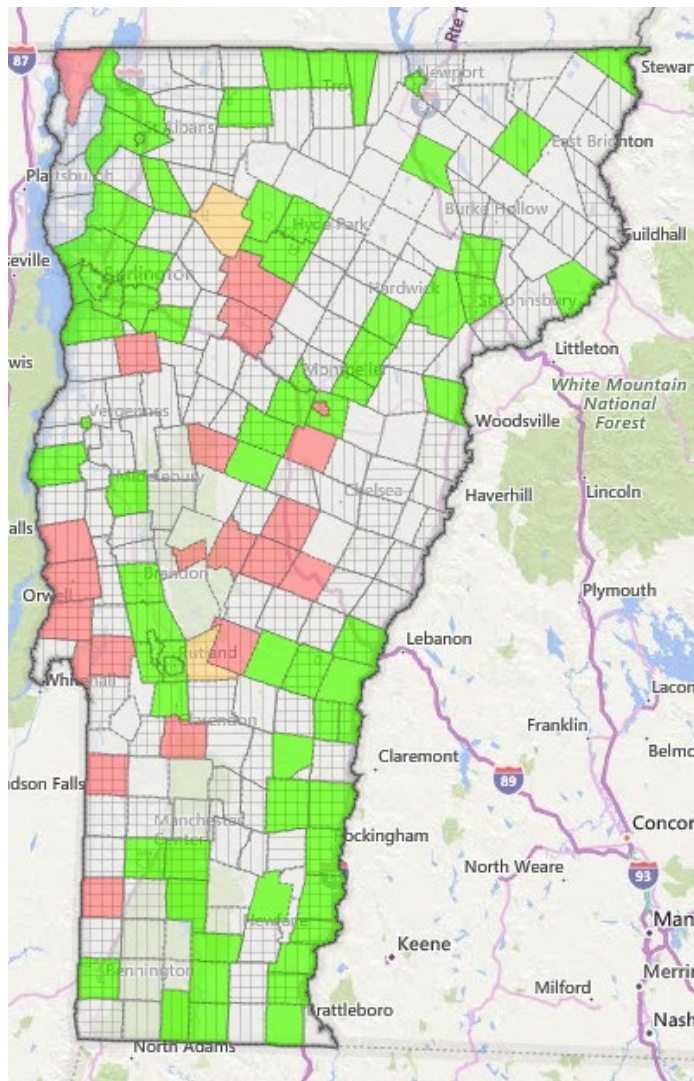
Mapping Status

Completed

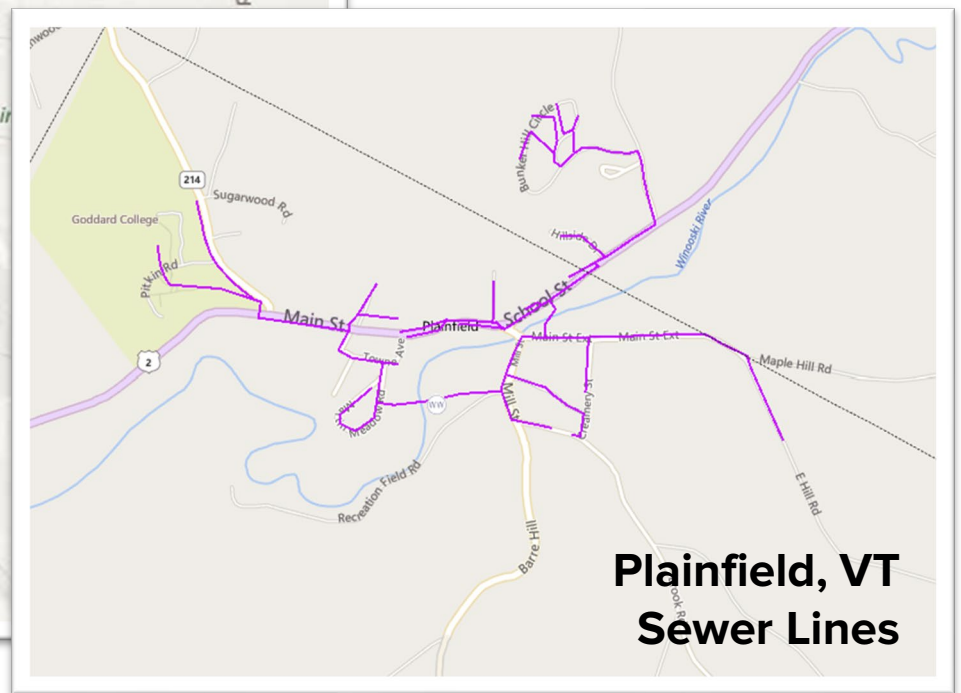
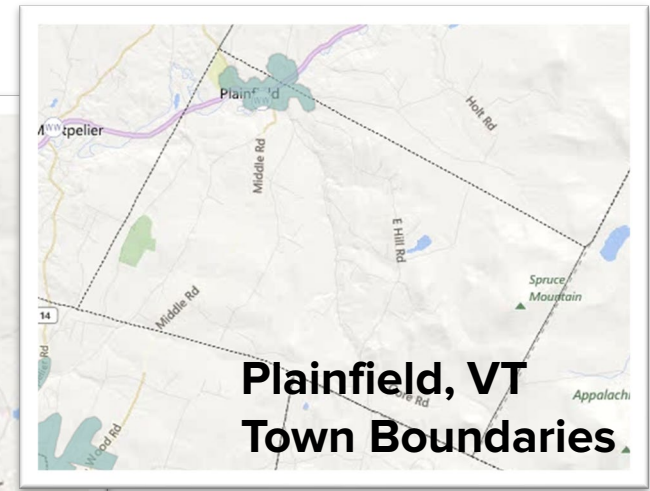
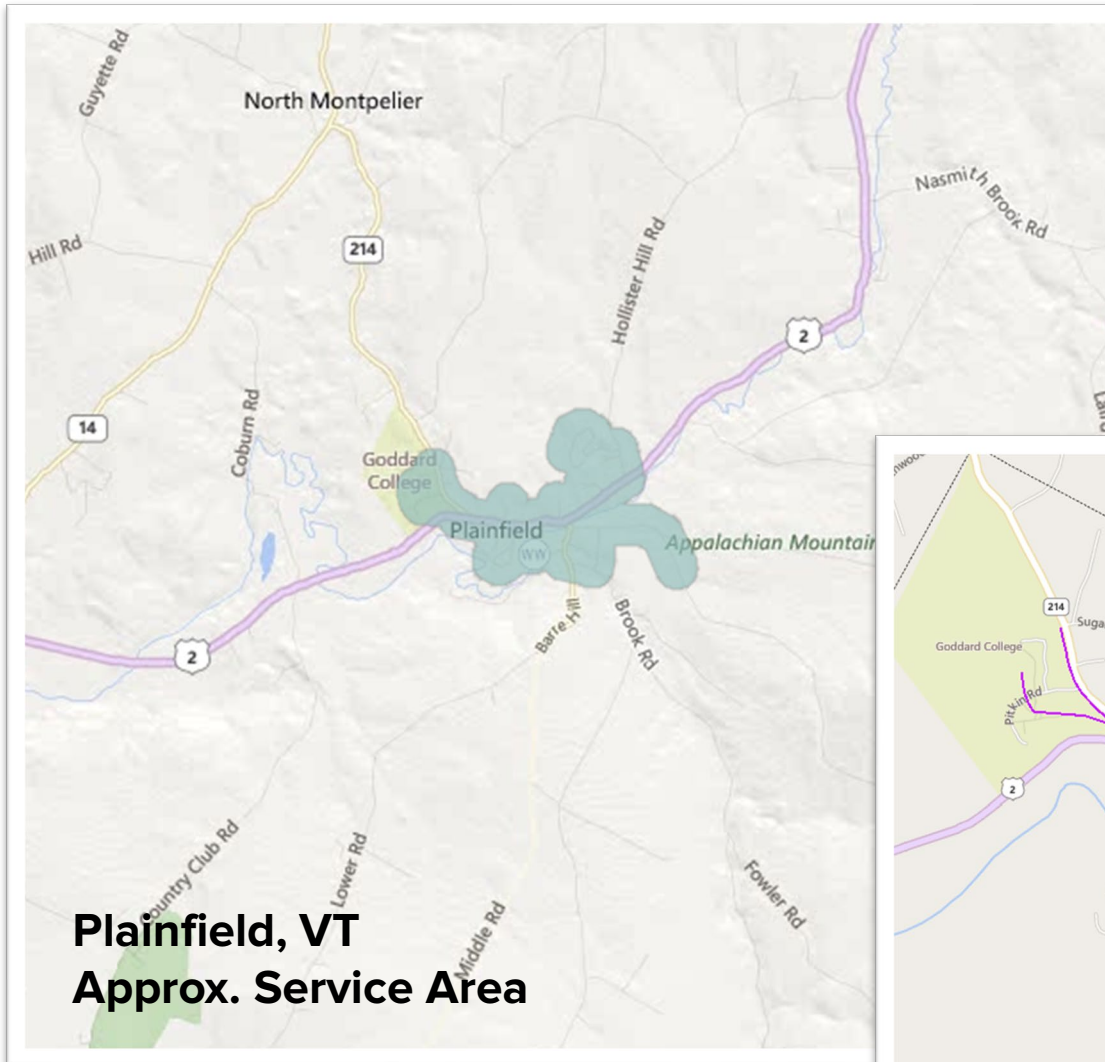
Partially Completed

Not Completed

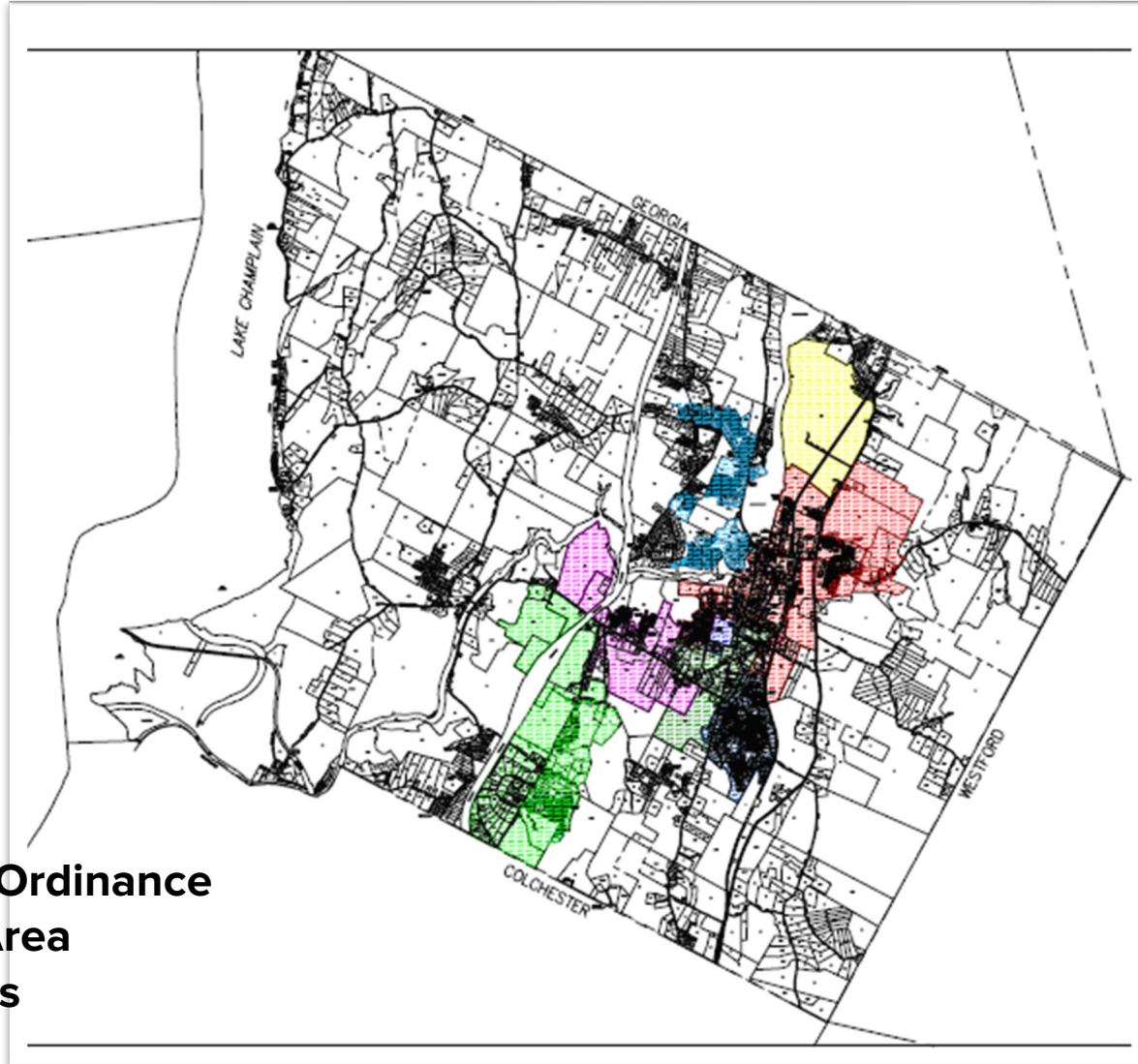
No Municipal Wastewater Systems



Wastewater Mapping Example

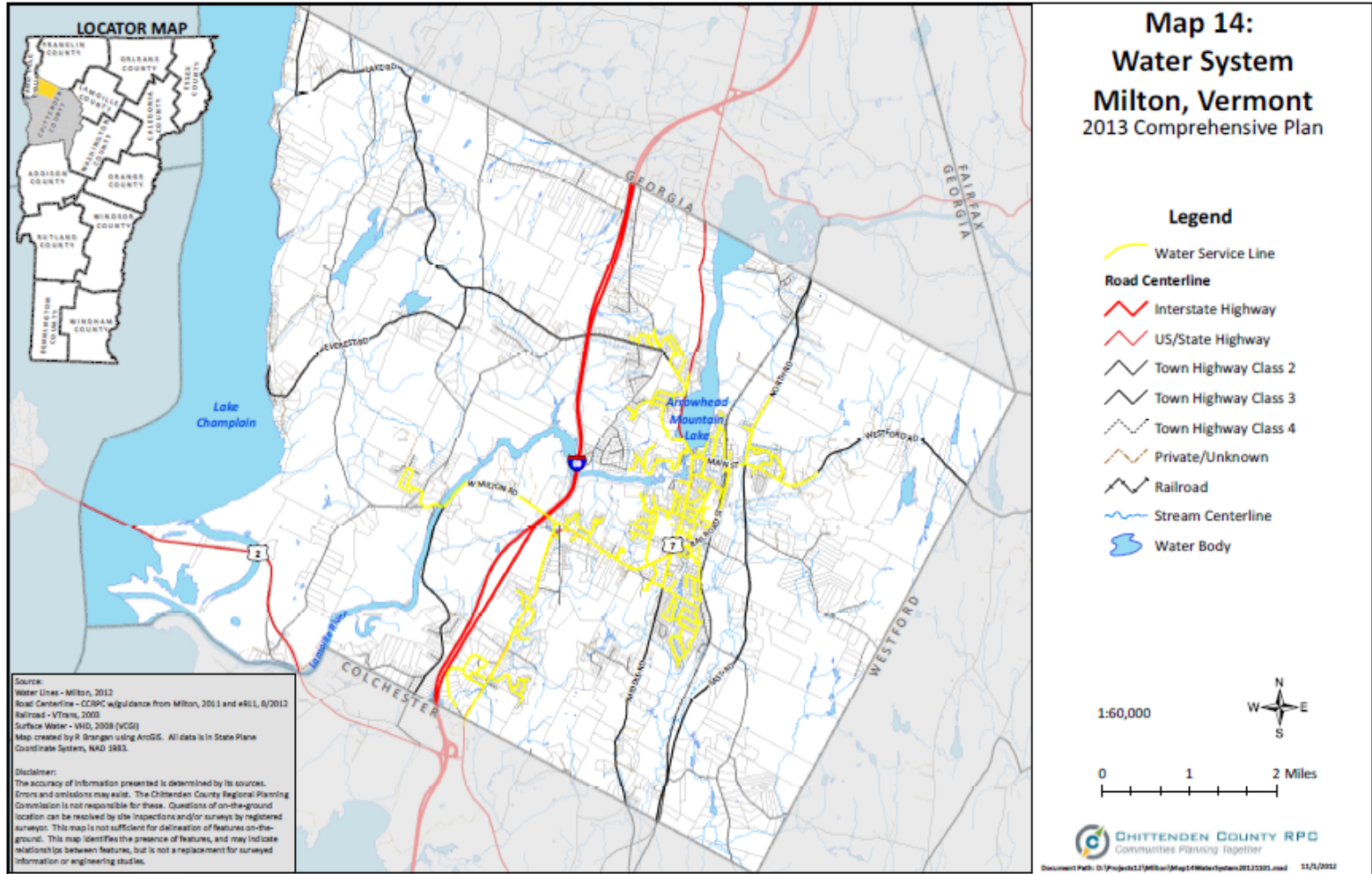


Municipal Water Map Ordinance Example



**Milton, VT Water Ordinance
Approx. Service Area
w/Service Districts**

Municipal Water Map Plan Example



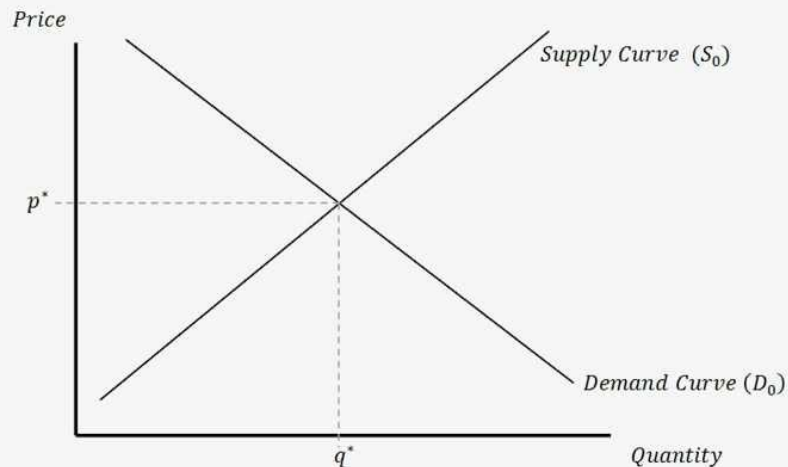
S.237 | **Sec. 2**

Section-by-Section Review of Section 2

Including Inclusive Development Provisions (2)(b)

The Market For

Equilibrium Price and Quantity



SUPPLY

LOTS+
PERMISSIONS +
CONSTRUCTION CAPITAL+
INFRASTRUCTURE +
MATERIALS +
LABOR =

HOUSING

DEMAND

PEOPLE+
JOBS+
QUALITY OF PLACE+
AVAILABILITY+
PRICE+
CAPITAL/FINANCING=

HOME

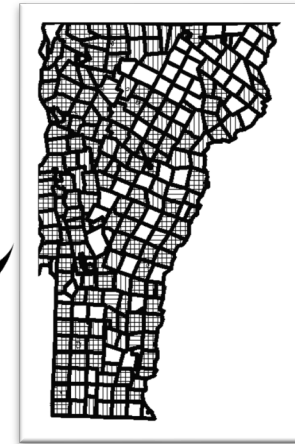
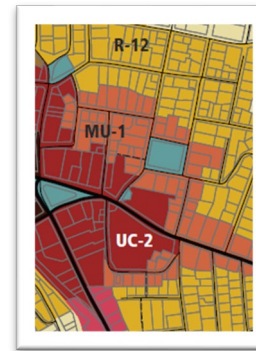
Allow Small Multi-Family w/o a “Character” Test

APPLIES IN ...

MUNICIPALITIES
THAT PLAN & REGULATE

In Zoning Districts that Allow Multi-Unit
Housing

For Small (<4) Multi-Family Projects



Allow small multi-unit
uses without a character-
based review to make
review more predictable &
limit appeals.

202 Municipalities Potentially Affected

What is a “character” test?

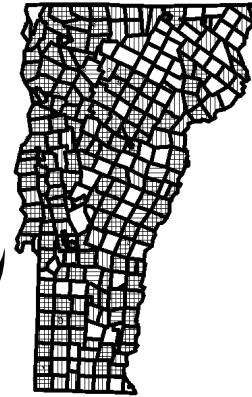
- Zoning divides a municipality into **regulated districts**
- Districts define **uses**: exempted, permitted, conditional and prohibited.
- **Conditional uses** are subject to at least five discretionary review standards established by 24VSA4414(3)(A); one of them is: ***character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal plan.***
- **Subject to a board review** instead of being able to be reviewed by the permit administrator.
- Makes review **less predictable** and opens a wide door for **more appeals**.
- Discretionary reviews **increase the cost of housing** and make it harder to build.
- Limiting this as a review standard does not affect a municipality’s ability to apply site plan review, design review, historic preservation review, form-based code, building codes, and more to ensure that what gets built is “in character” using clear and predictable standards.

Extend Accessory Dwelling Unit (ADU) Flexibility

APPLIES IN ...

ALL MUNICIPALITIES
THAT PLAN & REGULATE
ON OWNER-OCCUPIED LOTS
NOT IN A FLOOD HAZARD AREA
WITH A SINGLE-FAMILY
DWELLING

Allows larger ADUs with
owner-occupant in ADU or
single-family dwelling.
Empowers municipalities to
regulate distinctly from a
short-term rental.



202 Municipalities Potentially Affected

Allow Development on Existing Small Lots

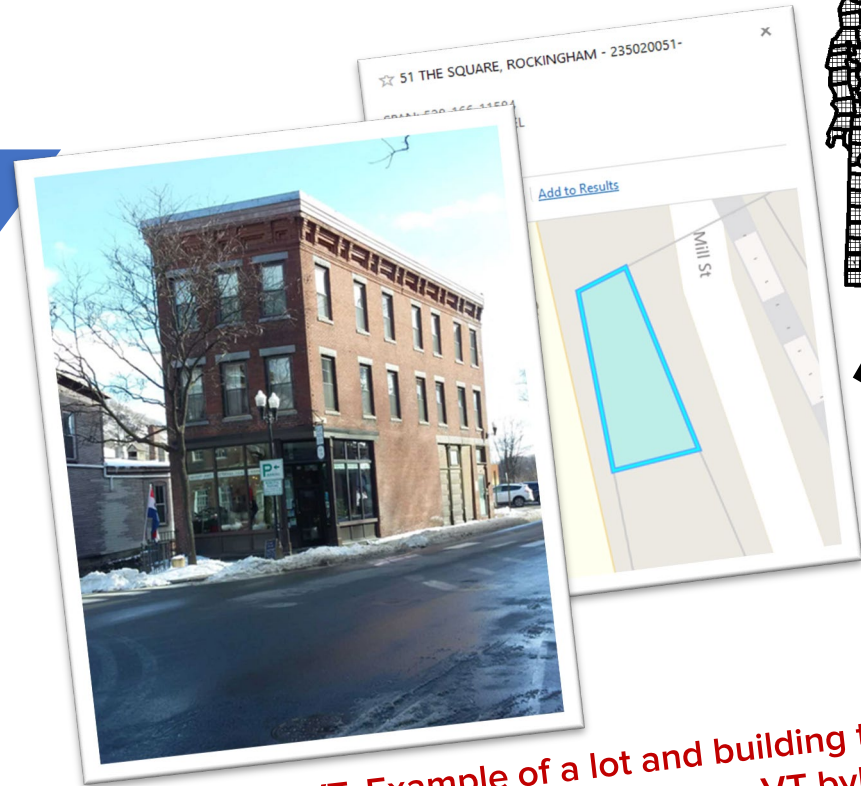
APPLIES IN ...

ALL MUNICIPALITIES
THAT PLAN & REGULATE

WITH EXISTING, NON-CONFORMING
SMALL LOTS

SERVED BY WATER & SEWER

Allows infill development of
existing small lots able to
connect to water & sewer.



Bellows Falls, VT: Example of a lot and building that would be ILLEGAL to develop under many VT bylaws.

83 Municipalities Potentially Affected



Small-Scale Lot Subdivision Scenario

- Sal and Shannon are retiring and want a smaller, lower-maintenance home that frees them up to take more vacations.
- They find very few small homes in their community.
- They like the senior apartments in town, but don't feel quite ready for that.
- They live on a 1/3-acre village lot zoned for residential uses and served by water and sewer w/ capacity and value the conveniences of village living, like walking to the store and library.
- They learn the zoning doesn't allow them to subdivide but allows a 1-bedroom ADU; Sal and Shannon want two bedrooms so people can visit; plus, they're not keen to be landlords.
- Also, their existing home would need code improvements to meet the rental housing safety code, and they could sell it without changes.
- They prefer to be able to subdivide and use their "extra" land to build a small home that meets their needs.
- ***With a water/wastewater permit, local lot size reform would allow Sal and Shannon to subdivide, build a new home, and sell their old home without leaving their neighborhood and community.***

Allows Quarter Acre Lot Min. on Municipal Water

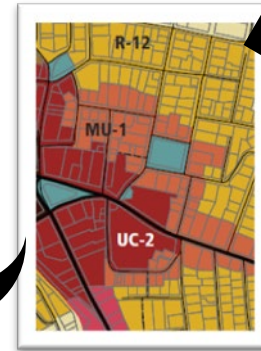
APPLIES IN ...

ALL MUNICIPALITIES
THAT PLAN & REGULATE

THAT OPT IN
IN RESIDENTIAL ZONING
DISTRICTS

NOT IN A FLOOD HAZARD AREA

SERVED BY WATER
w/W&WW Permit



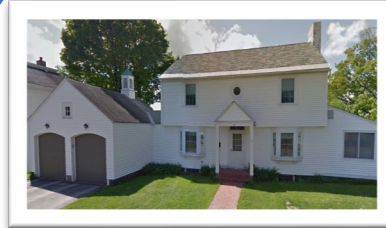
Expand opportunities for
residential subdivision on
municipal water

Number of Municipalities Potentially Affected TBD
No Statewide Mapping
(Bill does not apply to Fire District Systems)

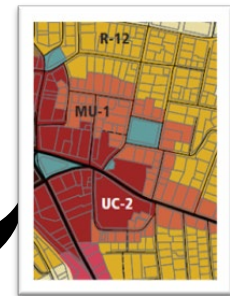
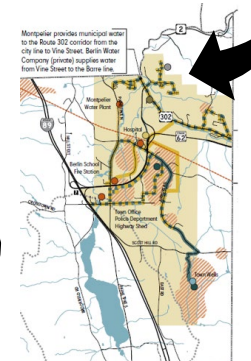
Allows Eighth-Acre Lot Min. on Municipal Water & Sewer

APPLIES IN ...

ALL MUNICIPALITIES
THAT PLAN & REGULATE
THAT OPT IN
IN RESIDENTIAL ZONING
DISTRICTS
NOT IN A FLOOD HAZARD AREA
SERVED BY WATER &
SEWER
w/W&WW Permit



Home on 1/8 acre in Barre City.



Expands opportunities for residential subdivision on water & sewer

83 Municipalities Potentially Affected

Allows Two-Unit Dwelling (Duplexes) on Water & Sewer the Same as Single Family

APPLIES IN ...

ALL MUNICIPALITIES
THAT PLAN & REGULATE

THAT OPT IN

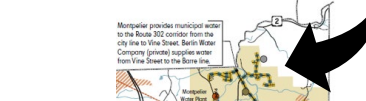
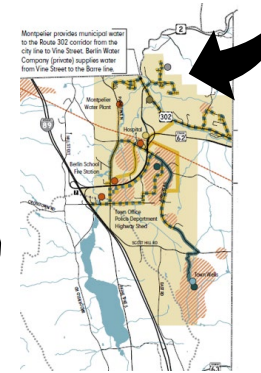
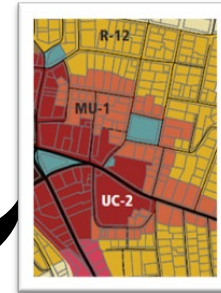
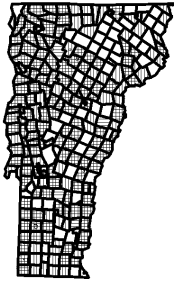
IN RESIDENTIAL ZONING
DISTRICTS

SERVED BY WATER &
SEWER

w/W&WW Permit



Allows Duplexes to
the Same Extent as
Single-Family
Dwellings on Water
& Sewer

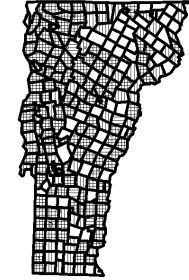
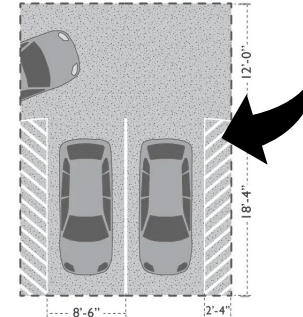


83 Municipalities Potentially Affected

Allows Parking Minimum Reduction When Parking Costs are Unbundled from Housing Costs

APPLIES IN ...

MUNICIPALITIES
THAT PLAN & REGULATE
THAT OPT IN
WITH PARKING MINIMUMS
½ MILE OF TRANSIT



Allows a 50% minimum parking reduction by unbundling costs of parking that may not be needed or wanted to make housing more affordable. Empowers municipality to condition permit.

202 Municipalities Potentially Affected

Empowers Municipality to Limit Covenant Restrictions in Conflict with Local Bylaws

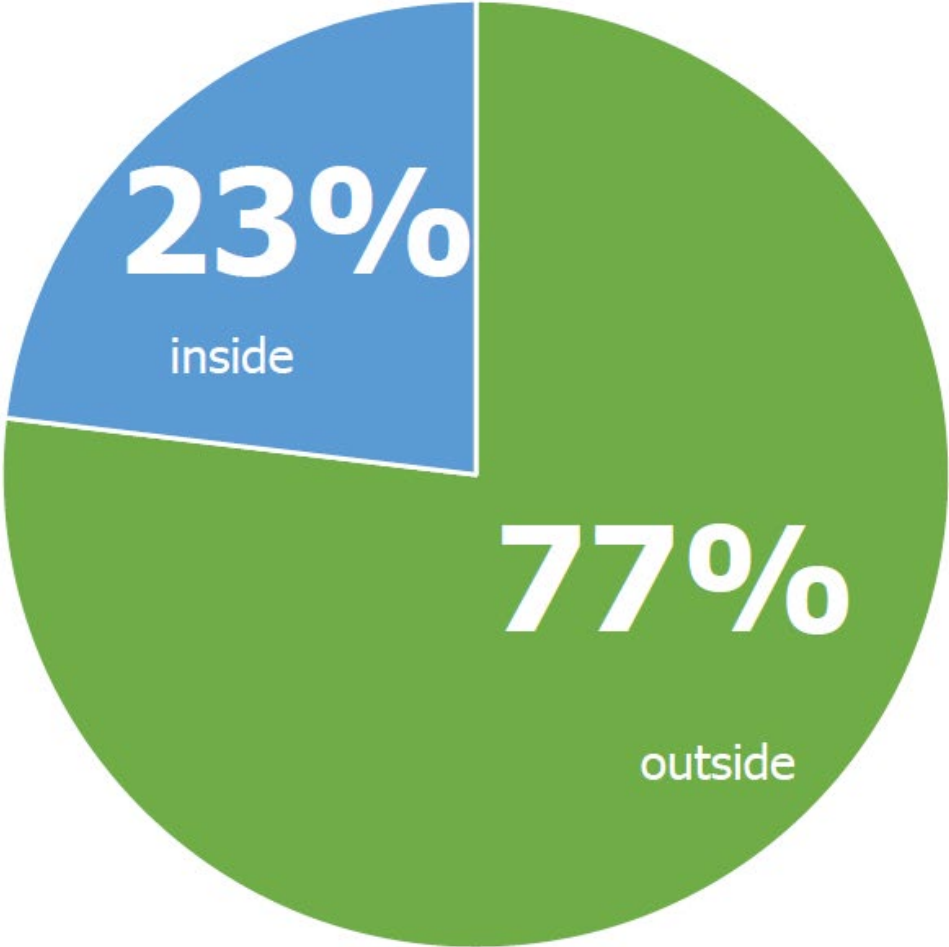
APPLIES IN ...



Municipalities Potentially Affected TBD

Residential Growth 2004-2014

Residential Structures



As Vermont's youth and college students exit the state at increasing rates and we scratch our heads asking why, we are confronted with the following truths: that many of them don't feel safe here due to social ills, that many cannot afford to buy homes in Vermont, that many are in search of more diverse cultural offerings, and that communities that are unwilling to adapt to the evolving needs of future and prospective residents will have to reckon with those choices.

Xusana Davis

State Designations: 223

Core Designations



Village Centers: 187



Downtowns: 23



New Town Centers: 2

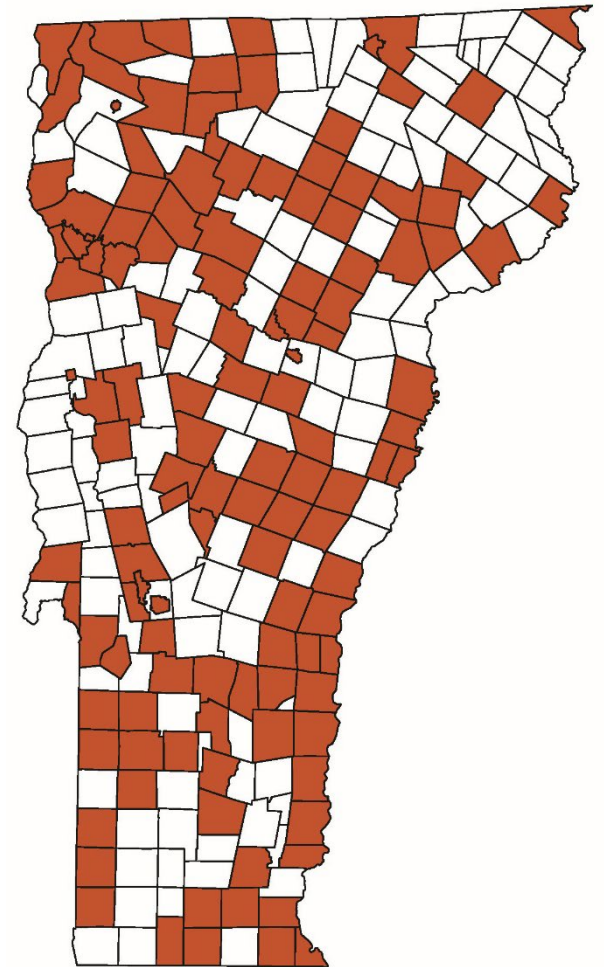
Add-On Designations



Neighborhood Development Areas: 5



Growth Centers: 6



S.237, Key Provisions

An act relating not promoting affordable housing

Added to H.926 – Passed in the House, now in Senate Finance

Exempts Act 250 in State Designated Downtowns & Neighborhoods

- Modifies jurisdiction to exempt development-ready downtowns and neighborhoods, and villages
- Transitions existing permits to municipal review

One-stop State & Municipal Water/Wastewater Connection Permits

- Exempts state connections permits in willing and capable municipalities
- Requires communities to improve maps of their sewer and water infrastructure (Still in S.237).

S.237, Key Provisions

An act relating not promoting affordable housing

Unanimously Passed in Senate

Creates more housing opportunities in areas with sewer and water capacity

- Enables subdivision of small lots in residential zoning districts
- Allows more flexibility for ‘missing middle’ housing, like: ADUs, duplexes and small multi-family
- Provides funding priority for water and sewer systems, municipal planning grants, community development grants and downtown and village tax credits

Expands Downtown & Village Tax Credits to Neighborhoods/Flood Readiness

- Extends program benefits to designated neighborhood development areas to encourage housing investment around our commercial centers
- Enables credits to support “qualified flood mitigation” projects to encourage investments in flood resilience.
- Increases program cap from \$2.6M to \$3.9M (budgeted)

S.237, Key Provisions

An act relating not promoting affordable housing

Age-specific Housing Study by Jan. 2021

- Collaboration with Dept. of Disabilities, Aging, and Independent Living
- Focus on older Vermonters

Short-Term Rental Impacts and Regulation Report by Jan. 2021

- Allows collection of data on short-term rental impacts with emergency rules
- Asks for regulatory recommendations
- Enumerates municipal ordinance authority to regulate

S.237, Key Provisions

An act relating not promoting affordable housing

Mobile Home Park Infrastructure

- Directs DEC to structure state revolving loans funds to allow for relocation of homes and water/wastewater infrastructure improvements.
- Report on actions and recommendations by Jan. 15, 2021.
- Authorizes State Treasurer to provide financing for mobile home park infrastructure.

Vermont Housing Incentive Program

- Leverages private investment from small-scale landlords to bring rentals up-to-code and/or back and use.