

## **H.782: Key Provisions + Supporting Investments**

### **MODERNIZE STATE REGULATIONS:**

- 1. Act 250 in State Designated Downtowns & Neighborhoods**
  - Modifies jurisdiction to exempt development-ready downtowns and neighborhoods
  - Transitions existing permits to municipal review
- 2. State & Municipal Water/Wastewater Connection Permits**
  - Exempts state connection permits in willing and capable municipalities
  - Requires communities improve maps of their sewer and water infrastructure
- 3. Enables safe infill and redevelopment opportunities within Neighborhood Development Areas (NDA)**
  - Makes NDA designation consistent with existing the Department of Environmental Conservation's River Corridor procedures

### **HOUSING READY BYLAWS, MUNICIPAL TECHNICAL ASSISTANCE AND TRAINING:**

- Provides new funding [\$150K to RPCs and \$150K to MPGs] to help municipalities update and adopt model inclusionary housing bylaws developed in partnership with CNU, cities and towns, and Regional Planning Commissions (the bylaw project was underwritten with grants from VHCB, VT-AARP, and VAR)
- Funding [\$50K] to train "missing middle" builders and landlords to jumpstart development in all counties

### **NEW FUNDING TO INCREASE COMMUNITY INVESTMENT IN HOUSING:**

- 1. Tax Incentives**
  - Provides downtown tax credits for income producing properties to encourage communities to modernize their bylaws through the Neighborhood Development Area designation
  - Increases tax credit cap [\$1.4M to \$4M total] to support re-investment within designated Neighborhood Development Areas
  - Provides tax credits to elevate or flood proof buildings at risk from floods
  - Eliminates capital gains on the sale of improved homes located within federally designated Opportunity Zones
- 2. \$1M Vermont Housing Improvement Program Grants**
  - Creates housing provider grants [\$1M] to bring unsafe, blighted, and vacant rental units up to code and back online
- 3. \$250K "Better Places" Crowd-grants**
  - Establishes funding framework to leverage and additional \$250K funding from private foundations for placemaking projects in state designated centers.

## S.237: Recommended Amendments

1. **Amend Act 250 Sections:** New language to close Priority Housing Project loophole; clarifications to language enabling the review and transfer of existing Act 250 conditions to municipal permits
2. **Amend Section 3 on municipal pre-emption covenants:** New language to ensure conservation easements and housing subsidy covenants are not unintentionally pre-empted

### Language in H.782 not in S.237

3. **Enable 'one-stop' permitting for municipal system water and sewer connections:** Enable changes to reduce the cost and time to permit housing development within areas served by water and sewer infrastructure. The language proposes to exempt water and sewer connections from state permits unless the Secretary of the Agency of Natural Resources finds that the municipality does not meet certain criteria.
4. **Qualify tax credits for floodproofing work:** Expand eligibility of the benefits to include flood mitigation work within flood hazard areas where the National Flood Insurance Program's (NFIP's) floodplain management regulations are enforced, and the mandatory purchase of flood insurance applies. Qualified flood mitigation projects would have to:
  - meet any applicable local flood hazard bylaw
  - be certified by qualified professionals, and
  - meet historic preservation requirements if listed or eligible for the State or National Register.

These amendments intended to encourage more building owners to relocate basement-level utilities to upper floors and elevate structures above base flood elevation. As proposed, the tax credits could cover 50% of the qualified flood mitigation expenditures up to \$75,000.

5. **Raise the Cap on Downtown and Village Center Tax Credits from \$2.6M to \$4M:** Add language to increase the program cap and as well as miscellaneous housekeeping changes to the program.
6. **Add opportunity zone capital gains exemption:** Add an income tax exemption for capital gains for residential property located within a low-income census tract designated as an opportunity zone, if the property is sold to an owner-occupant.
7. **Create "Better Places" crowd-grant program:** Authorize a new program that will leverage and additional \$250K funding from private foundations for placemaking projects in state designated centers.
8. **Establish Vermont Housing Improvement Program:** Language to enable \$1M in housing provider grants to bring unsafe, blighted, and vacant rental units up to code and back online.

# Neighborhood Development Areas

## Designated Communities:

1. Burlington
2. Essex Junction
3. Manchester
4. South Burlington
5. Winooski
6. Westford

## Communities Pursuing Designation:

1. Barre\*
2. Brattleboro\* - application submitted
3. Bristol
4. Cabot
5. St. Albans
6. Castleton
7. E. Montpelier
8. Fair Haven
9. Fairlee
10. Hinesburg\*
11. Hyde Park
12. Jericho\*
13. Johnson
14. Lyndon
14. Middlebury\*
15. Middlesex
16. Montpelier\*
17. Putney
18. Richmond
19. Rutland
20. Shoreham
21. South Hero\*
22. Swanton
23. Vergennes\*
24. Waterbury
25. Stowe
26. Randolph

\* bylaws close meeting the designation requirements

## S.237: “Plain Speak” Section-by-Section Summary

### Section 1 – Page 2, lines 1-2

**Municipal Plan Water & Sewer Map & Statements: Facilities, Lines, & Service Areas.** This changes the requirements for municipal plans by adding detail to the existing requirement to include a map and statement of present and prospective water supply and sewage disposal to help owners, investors, and community leaders and policy makers determine existing and future municipal water and sewer. Although a map and statement of water and sewer is already a municipal plan requirement, the information produced does not consistently address best practices on the identification of facilities, lines and service areas necessary to guide coordinated enterprise and land use policies, regulations, and administration consistent. Including this additional information in municipal plans can lead to a more consistent and predictable regulatory framework for funding and development partnership within investment-ready areas.

### Section 1 – Page 2, lines 11-12

**Municipal Plan Housing Element.** This expands the scope of the municipal plan’s housing element and program to ensure it account for all fair housing provisions in the Planning Act (Title 24, Chapter 117)

The required provisions and prohibited effects section sets a level playing field and statewide baseline for the equal treatment of housing. Historically and nationwide, housing has been subject to exclusionary and discriminatory practices by municipalities and interested parties (also known as NIMBYS) leading to less socio-economically diverse communities. The section aims to extend greater equity and equal opportunity for housing.

### Section 2 – Page 1, lines 4 -7

**Standards of Review for Small Multi-Family.** Many small multi-unit dwelling projects (four units or less) are unnecessarily subjected to discretionary standards and conditional use review, making approval less predictable and increasing opportunities for permit appeals based on subjective criteria. This provision intends to reduce discretionary reviews and exclusionary appeals by stating that where such small-multi-unit uses are allowed, a small multi-unit must be a permitted (“by-right”) – not conditional use – and may not be subject to a character of the area review. It would not affect underlying districts or density the municipality has established for multi-unit dwelling uses.

### Section 2 – Pages 3-4

**Increases Accessory Dwelling Unit Flexibility.** This change aims to reduce a common point of confusion about the accessory dwelling (ADU) statute, which many interpret as a ceiling rather than a regulatory floor that can be made less restrictive. This change helps makes clear that ADU’s may not be subject to any higher standard of review than a single-family dwelling unit would be subject to, by no longer limiting ADUs to be one-bedroom or 30% of the size of the primary residence; such restrictions are reported to unnecessarily limit the production of accessory dwelling units, such as a small house on a large lot that cannot build an adequately-sized and modest ADU, while a significantly larger home on the same lot could. The proposal retains the flexibility for a municipality to be less restrictive than the baseline established above, such as not requiring owner-occupancy.

It also clarifies that municipalities may regulate overnight accommodation and lodging distinctly from residential dwellings intended for long-term occupancy according to local conditions and needs. The use of accessory dwelling units, or any dwelling unit, as a short-term rental may be regulated by the municipalities to reflect local conditions and needs.

### **Section 2 – Pages 4-5**

**Development of Pre-Existing Small Lots Served by Water & Sewer.** This provision would no longer allow a municipality to prohibit development of a pre-existing small lot with a narrow width or depth in areas served by water and sewer. It continues to allow a municipality to prohibit the development of existing small lots outside of areas served by development-enabling infrastructure. This recognizes that a small lot with narrow width or depth is neither unusual, nor undevelopable for infill served by water and sewer. Many such lots and buildings exist in Vermont’s centers and go underutilized.

### **Section 2 – Page 5**

**New Inclusive Housing Development Provisions.** This adds a new section to the required provisions and prohibited effects that allows a municipality to opt-out of the following paragraphs because of capacity constraints. Overall, these additions intend to ease restrictions on small-scale and efficient patterns of residential development focused on areas planned for and capable of accommodating incremental housing development in character with Vermont’s traditional settlement patterns. They aim to expand opportunities for smaller lots, duplexes, by-right reviews of multi-unit projects, and reduced parking. Municipalities would continue to be able to regulate form, bulk, design, and performance standards to guide character. The flood hazard and fluvial erosion area bylaws would still apply and take precedence. The overall goal of the combined provisions is to enable efficient, small scale, and incremental housing development consistent with statewide goals.

### **Section 2 – Page 5, line 15**

**Quarter-Acre Lots Served by Water.** Water and sewer infrastructure is one of the most influential development-enabling infrastructure investments that federal, state, and local funds support. This section aims to expand opportunities to subdivide quarter-acre lots in areas served by municipal water if the applicant can obtain a water/sewer permit to serve the resulting lot(s). Since land and infrastructure are a significant contributor to housing cost, reducing the amount of land required per conveyable lot (and linear feet of pipe per lot) is intended to increase potential land supply and lower potential costs per unit of housing in areas with substantial public investment in infrastructure.

### **Section 2 – Page 5, line 18**

**Eighth Acre Lots Served by Water and Sewer.** Like the prior section, these amendments aim to expand opportunities to subdivide eighth acre lots in areas served by municipal water and sewer if the applicant can obtain a water/sewer permit for the lot(s). Because land and infrastructure are a significant contributor to housing cost, reducing the amount of land required per conveyable lot (and linear feet of pipe per lot) is intended to increase the potential supply of buildable land and lower potential costs per housing unit in areas with substantial public investment in infrastructure. An eighth acre pattern of development is frequently cited in transportation planning as the baseline at which public transit becomes feasible; in fact, many public amenities and services become more efficient and affordable when minimum lot sizes decrease.

#### **Section 2 – Page 6, line 4**

**Duplexes Served by Water & Sewer.** This provision expands opportunities to develop a duplex on lots served by municipal water and sewer to the same extent as a single-family dwelling. Unlike Vermont’s accessory dwelling unit provisions, this would not require owner-occupancy. Duplexes in areas served by water and sewer are intended as a method to grow small-scale housing opportunities in areas with substantial public investment in infrastructure. Reviews by DHCD indicate that most low-density residential districts in Vermont already include duplexes as an allowed use, but many add unnecessary and costly land area requirements.

#### **Section 2 – Page 6, line 11**

**50% Reduction of Min. Parking Required for Spaces Leased Separately from Dwelling Units Located Near Transit.** Parking spaces cost between \$5,000 and \$25,000<sup>1</sup> to construct, and require additional funds to maintain (i.e. plowing, paving, striping, stormwater treatment, and landscaping). This provision is intended to make housing within a half mile of transit more affordable by allowing a developer to propose un-bundling residential unit rent from parking space rent. Under this section, un-bundling would allow a 50% reduction of the municipality’s minimum required parking -- reducing the cost to construct and operate a housing unit. In other words, one residential parking space would count as two spaces for regulatory purposes if the proposed parking will be separately leased and the project is near transit. It allows residents who do not want or need a parking space to have the choice not to subsidize free parking for other residents that the market would not otherwise require. It would not affect zoning districts without minimum parking requirements.

#### **Section 2 – Page 7, line 1**

**Opt-Out Provisions for Substantial Municipal Constraints.** This provision allows a municipality to opt-out of the proposed requirements for justifiable constraints (such as lack of water/sewer capacity for development) by filing a report to the Department of Housing and Community Development for public posting and comment. Opt-out reports would have to be updated upon each plan or bylaw amendment to account for any change in situation.

#### **Section 2 – Page 9, line 12**

**Opt-In Incentives (Including Water/Wastewater Funding).** Municipalities that have opted-in, or are working to overcome constraints that prevent opting-in, will receive priority funding for water and sewer infrastructure grants and programs, Municipal Planning Grants, the Community Development Program, and Downtown and Village Historic Tax Credits.

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<sup>1</sup> <https://www.strongtowns.org/journal/2018/11/20/the-many-costs-of-too-much-parking>

### **Section 3 – Page, line 16**

**Municipal Pre-Emption of Exclusive Covenants Preventing the Furtherance of Public Interest.** This section recognizes that inclusive bylaws furthering important public interests can be undermined via restrictive covenants, conditions, or restrictions put in place by municipal panels, developers, and owners' associations. This provision would allow a municipality to adopt bylaws that permit land development otherwise restricted by private covenants, conditions, or restrictions in conflict with the goals of the Planning Act and duly adopted municipal policies. For instance, this provision would enable a municipality to pre-empt and permit accessory dwelling units within a development where the homeowner's association disallows them. This mirrors legislation for renewable energy and energy saving devices statewide, which is known on the 'clothesline bill' because it prevents homeowners' associations from banning clotheslines. Unlike the provisions above, this does not set a common standard, but grants new powers to the municipality to address private restrictions that may limit housing -- but may also relate to other municipal interests. It is not intended to affect the enforceability of conservation easements or housing subsidy covenants.

### **Section 4 – Page 10**

**Report on Substantial Municipal Constraints.** This requires the Department to review and report to General Assembly by January 15, 2023 on the municipal constraints filed and make recommendations to reduce or eliminate constraints.

### **Section 5 – Page 10**

**Removes Priority Housing Project eligibility from Downtowns and NDAs.** Priority Housing Projects exempt from Act 250 certain qualified affordable and mixed-use developments within state designated centers. The broader exemption for Downtowns and NDAs levels the playing field for all development in areas the state has determined to have robust bylaws and capacity to regulate. Priority Housing Project provisions will remain in place within designated New Town Centers and Growth Centers.

### **Section 6 – Page 11-12**

**Exempt Downtowns and Neighborhood Development Areas from Act 250.** In order to promote development in and around reinvestment-ready centers, this section exempts State designated downtowns and neighborhood development areas (which can overlay a designated village center) from Act 250 review. It creates a process and criteria to extinguish existing Act 250 permits within these areas upon issuance of a municipal land use permit.

### **Section 7 – Pages 12-13**

**Repeal NDA Fees and 6086b Downtown "Off Ramp."** This strikes language for two sections because the existing Act 250 statute on 50% fee reductions for residential development within neighborhood development areas and 6086b downtown findings are made moot by the proposed jurisdictional exemptions.

### **Section 8 – Pages 13-14**

**Transfer Existing Act 250 Conditions to Municipal Permits.** This section outlines what happens to landowners seeking to develop sites with existing Act 250 permits that are located within State designated downtowns or neighborhood development areas (NDA) exempted from Act 250 review. In such cases, the municipalities appropriate municipal panel would be tasked with holding a hearing and issuing findings that include the Act 250 permit conditions in the municipal land use permits unless the condition meets certain criteria, such as conditions related to: 1) the construction phase for something already constructed, 2) compliance with another state permit, 3) federal and state law no longer in effect, 4) a matter addressed by municipal bylaw, and 5) physical or use conditions no longer present. The municipality must send a copy of the permit to the Natural Resources Board and continue to record the municipal permit containing the Act 250 conditions in the land records.]

### **Section 9 – Pages 14-15**

**Amends Downtown Designation Requirements for Local Act 250 Review.** The downtown designation process requires municipalities to demonstrate their commitment to protect local historic resources. The option to meet this requirement via Act 250 becomes moot given the process outlined in the prior sections.

### **Section 10 – Pages 17, line 9**

**Aligns Neighborhood Development Areas and River Corridor Policy.** This provision amends the requirements for approval of a NDA to allow for the inclusion of flood hazard areas and river corridors if the local bylaws include flood-ready provisions (current law excludes these areas from designation). This proposed change to the designation process brings the program into consistency with the Department of Environmental Conservation’s River Corridor procedures. The Agency of Natural Resources would collaborate with the Department of Housing and Community Development to review local bylaws as part of Neighborhood Development Area application process. The goal of this review is to ensure that: 1) new infill occurs outside the floodway, 2) new development is elevated or floodproofed above the base flood elevation, 3) development will not exacerbate fluvial erosion hazards, and 4) development is reasonably safe from flooding.

### **Section 10 – Pages 18 -24**

**Density Eligibility for NDA.** This provision clarifies the density eligibility for neighborhood development area designation to resolve existing ambiguity about the program’s baseline density. The change establishes a baseline for conventional subdivision of quarter-acre lots and maintains the net residential density and average existing density standards to ensure that efficient neighborhood development is enabled by the municipality prior to designation. The deletion of density determination is addressed in an earlier section that assigns this duty to the municipal administrative officer.

### **Section 11 – Pages 24 - 26**

**Enable Tax Credits for Neighborhood Development Areas, Title 32.** This section enables NDAs to qualify for downtown and village center tax credits to rehabilitate income producing buildings. Currently, tax credits may only benefit qualified buildings located within state designated downtowns and village centers.