

The State of Local Land Use Regulations in New Hampshire 2023 Update

Office of Planning and Development

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**BUSINESS AND
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2023 Summary

This article highlights the results of the 2023 survey. Aside from definition changes and other housekeeping zoning amendments passed to ensure municipal zoning ordinances are consistent with recent state statute changes, in 2023 communities passed 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 amendments, the vast majority of which were adopted by ballot at the Annual Town Meeting.

Many of these zoning amendments affect the regulation of new housing construction. While it is beyond the scope of this survey to assign motive to specific zoning amendments, housing-related zoning amendments appear to be driven by three factors: (1) the state's growing housing shortage, (2) recent state statute changes, and (3) pending legislation affecting the regulation of new housing construction.

Of particular note, in 2023, 4 communities amended their Accessory Dwelling Unit (ADU) ordinances to allow detached ADUs, 6 communities added a definition or adopted a workforce housing ordinance, 8 communities added a definition or adopted short-term rental regulations, 10 communities adopted definitions for solar arrays or a solar energy systems ordinance, and 1 community adopted RSA 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. 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. If a zoning ordinance contains no provisions pertaining to accessory dwelling units, then one accessory dwelling unit is permitted as-of-right to any single-family dwelling in the municipality. Of the 206 jurisdictions with an ADU ordinance, 175 jurisdictions require the principal dwelling unit or the accessory dwelling unit to be owner-occupied. 113 jurisdictions allow accessory dwelling units in structures which are detached from the principal dwelling unit (an increase of 4 jurisdictions from the 2022 survey). About half of the jurisdictions that regulate accessory dwelling units permit them as-of-right, while the other half require a discretionary approval via a conditional use permit or special exception. In most communities that allow both attached and detached ADUs, attached ADUs are allowed as-of-right and detached ADUs require obtaining a conditional use permit or special exception.

In 2023, several municipalities created more flexibility in their ADU ordinances:

- **Enfield** expanded its ADU Ordinance to allow 2 ADUs on all lots where single-family homes are allowed, with one of the two ADUs allowed to be detached.
- **Keene** amended its ADU ordinance to allow attached and detached ADUs on all lots with single-family dwellings even if the principal dwelling unit is non-conforming.
- **Manchester** increased the allowed size of ADUs, expanded their permitted locations within lots of record, reduced which ADUs require a Conditional Use Permit, and lowered the parking requirement to 1 space per ADU.
- **Lebanon** allowed a detached or attached ADU on any lot with a two-family dwelling. In addition to requiring that one of the units is occupied by the property owner, the ADU will be subject to the design requirements, size limitations, and all other applicable regulations set forth in their zoning ordinance.
- **New Durham** allowed detached ADUs where 150% of required lot area is provided.
- **Newmarket** streamlined the ADU permit process to only require a building permit to construct an attached or detached ADU and amended the ADU ordinance to allow for ADU parking spaces to encroach into a lot's setbacks.

A few communities also added restrictions; **Brookfield** amended its ADU regulations to limit the total ADU area to 30% of the total dwelling area or 750 square feet (whichever is larger), and prohibited the use of campers, RVs or manufactured homes as ADU's.

Workforce Housing & Age-Restricted Housing

Among New Hampshire's 234 municipalities, 82 communities allow workforce housing (an increase of 6 from the 2022 survey), including 33 communities who have workforce housing multi-family overlay districts in accordance with the state's workforce housing law, RSA 674:58-61 ¹. The law 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 multi-family housing for rent 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. However, more rural communities, facing a growing workforce and housing shortage, have also considered adoption of workforce housing ordinances.

50 of these communities have an inclusionary zoning clause in their workforce housing ordinance, which provides a density bonus or other incentive in exchange for a property owner renting or selling a percentage of units (usually between 10 – 20%) below market rate. Some communities have also expanded their workforce housing ordinances and overlay districts to increase opportunities for workforce housing.

¹ 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.

78 communities have age-restricted housing regulations, some of which offer incentives to developers providing housing for persons over age 55 or 62. As a result of a statute change that took effect July 1, 2023, which requires any incentives for age-restricted housing also be applicable to workforce housing, some communities have adopted amendments to either expand or limit these regulations. Some repealed their age-restricted housing ordinances, while others made their workforce housing ordinances more restrictive. Some communities amended their age-restricted housing ordinances to more closely align with the requirements and incentives in their workforce housing ordinances without creating additional restrictions.

- **Bedford** reduced the permitted density for elderly housing developments from 28 units per acre to 18 units per acre and removed elderly housing as a permitted use from certain districts.
- **Brookline** amended its workforce housing ordinance to align allowed densities, setbacks, and building separation with those for age-restricted housing and removed the exemption for age restricted housing from their Growth Management Ordinance.
- **Loudon** amended its workforce housing ordinance by removing the applicability clause with meeting the fair share requirements and reduced the maximum allowed density for elderly housing developments from 10 to 2 dwellings per acre.
- **Greenland** amended its ordinance to cap age-restricted housing at 12% of all housing units as of April 1 of each year.
- **Hollis** removed all references to housing for older persons from its zoning ordinance.
- **Wilton** voted to limit its Age Restricted Housing District to areas served by town water and sewer.
- **Windham** amended its overlay district to increase minimum lot area requirements, modify density requirements, increase separation between buildings, increase vegetative buffers, and removed certain density bonuses for age restricted housing.

Other municipalities, including **Hampton Falls, Henniker, Dunbarton, New London, and Peterborough**, amended their workforce housing ordinances or workforce housing overlay districts to increase opportunities for workforce housing. **Andover, Candia, Chesterfield, Fremont, Northwood, and Raymond** adopted a workforce housing ordinance or created a workforce housing overlay district for the first time in 2023.

These and other communities also made other zoning changes intended to lower regulatory barriers to developing housing.

- **Berlin** now allows manufactured homes on all lots that allow single family dwellings, if they comply with HUD safety standards and are affixed to a permanent foundation.
- **Enfield** reduced the minimum lot size from .5 to .25 acres in the R1 Enfield Village – Mascoma Lake Residential Zoning district for dwellings where municipal sewer is available.
- **Keene** reduced the minimum lot size from 5 acres to 2 acres in the low-density rural district.
- **Lebanon** now allows cottage style developments of up to 16 homes not more than 1,500 square feet in size on small, clustered lots by conditional use permit in all residential zoning districts. These are intended to be more affordable than typical single-family homes on larger lots. Lebanon also amended its manufactured housing park ordinance to allow for neighborhoods with 5,000 square foot lots and reduced paved road widths.

- **New London** amended its Workforce Housing Overlay District to provide density bonuses, allow a range of house types including garden style multi-family and townhome workforce housing in all zoning districts by conditional use permit. It also added flexibility for the Planning Board to decrease minimum lot size requirements, road frontage, setbacks, and open space requirements for workforce housing.
- **Ossipee** now allows duplexes by-right in the Commercial and Roadside Commercial Districts, the only remaining zoning districts in Ossipee where they were previously prohibited.

Short-Term Rentals

With the explosion of short-term rentals in areas of the state popular with tourists including the Mount Washington Valley, Lakes Region, and Seacoast, in 2023 8 communities added definitions for short-term rentals or short-term rental regulations, increasing the number of communities that regulate short-term rentals to 49. Communities outside of those that have been popular with tourists in southern New Hampshire and elsewhere have adopted short term regulations in response to an increasing number of year-round housing units being converted to short-term rentals. **Alton, Epsom, Gilford, Hampton** (also added a STR Overlay District), **Jaffrey, Newmarket, Randolph,** and **Sunapee** added language pertaining to short-term rentals to their zoning ordinance in 2023. **Conway** also enacted a short and long-term rental licensing and inspection program, and **Easton** enacted a short-term rental permitting requirement

Impact Fees and Growth Management Ordinances

86 communities, primarily in southern New Hampshire and the Seacoast levy impact fees for schools, fire and police, and/or other municipal infrastructure. 22 communities have growth management ordinances which limit the number of permits that can be issued in a given year for new housing to a percentage of the municipality's existing total number of housing units.

Solar Energy Ordinances

More and more communities are adopting comprehensive solar ordinances to regulate roof and/or ground mounted solar arrays. In 2023, 10 communities adopted definitions for solar arrays or a solar ordinance, bringing the number of communities with solar energy regulations to 73. Some communities regulate solar arrays in their zoning ordinance while other regulate them in their site plan review regulations. As the size and complexity of solar arrays has grown in recent years, communities have adopted increasingly comprehensive solar 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 67 communities have adopted 79-E with **Charlestown** becoming the newest community to adopt the program in 2023.

Mixed-Use Zoning

While separation of residential, commercial, and industrial uses, remains the dominant zoning trend throughout the state, 146 communities have created mixed-use zoning districts, usually in their downtowns or village centers. These allow for residential, commercial, and retail uses to be located either near each other or within the same structure. **Hampton** added a mixed-use overlay district allowing residential and commercial uses in the underlying Industrial District. **Wilmot** allowed mixed-use development in commercial and village districts. However, **Merrimack** repealed their mixed-use development conditional use permit in Zone I-1 in 2023.

Conservation Subdivision/Open Space Residential Development/Cluster Housing

179 jurisdictions allow conservation subdivisions/open space residential development/cluster housing in accordance with RSA 674:21(I)(f) where homes are spaced closer together than in a traditional subdivision, in exchange for permanently protecting a percentage of open space. Many of these communities provide a density bonus for developments that conserve more than the minimum required amount of open space. In 2023, no new communities adopted a conservation subdivision/open space residential development ordinance. However, **Bedford** amended its open space residential development regulations by increasing the minimum required open space from 25% to 40% and providing more flexibility in the design of the open space area. **Brookline** amended its open space development ordinance to require a minimum tract area of 20 acres and laying out steps for creating a yield plan.

Final Thoughts

A few final notable observations from the 2023 survey include:

- 164 jurisdictions have developed performance-based standards, 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.
- 8 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.
- 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.
- 68 communities have adopted master plan updates since the beginning of 2020 including 23 who updated at least one chapter of their Master Plan in 2023 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, arts, and resiliency.

As this article demonstrates, many 2023 regulatory changes pertained to how housing is being addressed across the state. While some jurisdictions rolled backed housing incentives, many are utilizing innovative planning and zoning approaches to increase opportunities in their communities while planning proactively for the future.

The complete results and full analysis of the 2023 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>

For additional information or questions e-mail planning@livefree.nh.gov.