State of Emergency Legal FAQs

VLCT's Municipal Assistance Center (MAC) developed the following FAQs to help municipalities understand the scope of their legal authority in managing an ongoing emergency.

Emergency Management

Who's in charge during a natural disaster?

At the state level, the Department of Public Safety has a division called Vermont Emergency Management (VEM). The director of VEM is charged with coordinating all emergency management efforts within the state. 20 V.S.A. § 3.

At the local level, each municipality is directed to establish a local organization for emergency management. The selectboard or executive officer (e.g. mayor) may appoint a local Emergency Management Director (EMD) who is responsible for the organization, administration, and coordination of the local organization for emergency management, subject to the direction and control of the selectboard or executive officer. If no EMD is appointed, the selectboard or executive officer is the EMD. In towns that have a town manager form of government, the town manager is the EMD. Each local emergency management organization is charged with performing the emergency management functions within the territorial limits of the town or city, and in neighboring communities under certain circumstances defined by statute. 20 V.S.A. § 6. The EMD may appoint an emergency management coordinator and other staff as needed to carry out emergency functions.

"Emergency functions" include "services provided by the Department of Public Safety, firefighting services, police services, sheriff's department services, medical and health services, rescue, engineering, emergency warning services, communications, evacuation of persons, emergency welfare services, protection of critical infrastructure, emergency transportation, temporary restoration of public utility services, other functions related to civilian protection, and all other activities necessary or incidental to the preparation for and carrying

out of these functions.” 20 V.S.A. § 2(4). “Emergency management” means the “preparation for and implementation of all emergency functions, other than the functions for which military forces or other federal agencies are primarily responsible, to prevent, plan for, mitigate, and support response and recovery efforts from all hazards. Emergency management includes the equipping, exercising, and training designed to ensure that this state and its communities are prepared to deal with all hazards.” 20 V.S.A. § 2(6).

The EMD is responsible for coordinating all emergency actions within the community. As a practical matter, this means that in an emergency, the EMD helps to ensure that all of the town services are coordinated. For example, the police and fire departments may need to coordinate with the utility and highway departments.

Carrying out these functions is immune from liability. According to statute, “except in the case of willful misconduct or gross negligence, the ... local emergency planning committees ... involved in ... emergency management activities shall not be liable for the death of or any injury to persons or loss or damage to property resulting from an emergency management service or response activity, including the development of local emergency plans and the response to those plans.” 20 V.S.A. § 20(a).

Each municipality must participate in the development of an all-hazards plan with the local emergency planning committee and the public safety district. 20 V.S.A. § 6(c). The local emergency planning committee is appointed by the state emergency response commission and should be comprised of representatives from the fire department; local and regional emergency medical services; local, county, and state law enforcement; media; transportation; regional planning commissioners; hospitals; industry; the National Guard; the Department of Health district office; an animal rescue organization; and may include other interested public or private organizations. This committee is responsible for preparing a local emergency response plan in coordination with the Vermont State Emergency Management Plan. A Local Emergency Management Plan (LEMP) allows individual communities to coordinate disaster responses.

During a state of emergency, your municipality's EMD should call 1-800-347-0488 or (802) 244-8721 to immediately report your municipality’s needs to the State Emergency Operations Center (SEOC). You can also use the same numbers under normal circumstances to contact VEM for assistance with developing your LEMP.

Who's in charge when a state of emergency is declared?

On July 9, 2023, Vermont Governor Scott declared a state of emergency (Executive Order No. 03-23) in anticipation of the damage created by excessive rain contributing to excessive storm water runoff, flooding, and erosion. This declaration enables the governor to exercise additional powers for as long as he determines the emergency exists. These powers include, among others, directing the Interim Director of the Division of Emergency Management (VEM) to activate the State Emergency Operations Plan; calling the National Guard into active service; suspending any relevant rules and permitting requirements to the extent necessary to respond to the conditions created by the storm to conduct hazard mitigation, support response and recovery efforts, alleviate hardship and suffering, and preserve public safety and property of the State; and exercising any other powers and duties as may be necessary to promote and secure the public's safety. 20 V.S.A. §§ 8, 9, 11. Upon the termination of the state of emergency, the Governor's emergency powers will cease, and the local authorities will again resume control. 20 V.S.A. § 13(3).

Town Highways

How does the selectboard temporarily limit motor vehicle travel on town highways?

A selectboard is authorized under 19 V.S.A. §§ 303 and 1110, and 24 V.S.A. § 2291(4) to adopt a resolution providing for temporary restriction of the use of town highways up to and including closure. Furthermore, during a state of emergency, additional authority is granted to municipalities to "make, amend and rescind orders and rules as necessary for emergency management purposes … not inconsistent with any orders and rules adopted by the Governor or by any State agency exercising a power delegated to it by him or her." 20 V.S.A. § 16.

Depending upon the urgency of the need, a resolution to close a highway or bridge could be adopted by a selectboard at an emergency meeting, special meeting, or at a regular meeting – notwithstanding that the resolution was not included on the meeting agenda as it would constitute a condition requiring the bodies immediate attention.

A copy of the selectboard's resolution must be posted in at least two public places in town and signs must be conspicuously posted at each end of the closed roads informing travelers of the

restriction (e.g., “Road Closed Except to Local and Emergency Traffic”), giving as much notice as possible to the public so that alternative routes of travel can be considered. Violations of the rules are enforceable as a traffic offense and the violators can be fined up to $100. 19 V.S.A. §§ 1110(a),(b).

Please see our Restricting Use of Town Highways Info Sheet which includes a sample road closure resolution, for more information.

What can the selectboard do in an emergency if it needs to relocate a bridge or reconstruct a town highway outside the existing highway right-of-way?

If a town highway is made impassable or its width reduced to prevent safe travel, or if a bridge is destroyed by a flood, the selectboard is authorized by statute to change the location of the highway or bridge. The selectboard “may take, damage, or affect such land as may be necessary at the location of the slide, or washout, for the purpose of re-establishing, repairing, rebuilding or protecting the highway or bridge, and may proceed immediately to build or rebuild the highway or bridge and open the highway or bridge for work and travel.” 19 V.S.A § 935.

The law requires that the selectboard follow the procedures in 19 V.S.A. § 923 for giving notice, inspecting property, determining need, awarding damages and satisfying appeals. 19 V.S.A. § 936. The quasi-judicial process that must be followed can be found in 19 V.S.A. § 923.

In non-emergency situations, the statute requires written notice be given to the affected property owner(s) by certified mail 30 days prior to an inspection. 19 V.S.A. § 923(1). In situations where such a delay is not practical, VLCT advises that the selectboard hold an emergency or special meeting and convene a hearing on the site, giving actual verbal notice of the hearing to the affected property owners at the site (e.g., knock on doors and/or leaving flyers). The notice for the property owners should include a description of the relocation or reconstruction activity being considered by the town.

The selectboard should open the emergency hearing, inspect the site, and receive testimony “pertinent to the problem.” 19 VSA § 923(2). After taking this testimony, the board must decide that the proposed activity or work is necessary and establish any conditions for accomplishing the work. 19 VSA § 923(3). In this context, “necessity” does not mean absolute

or imperative necessity, but only “a reasonable need which considers the greatest public good and the least inconvenience and expense to the [town] and to the property owner.” 19 V.S.A. § 501(1).

The selectboard’s decision can be made verbally at the conclusion of the hearing but must be followed up with a written decision that describes the reasons for the work, the statement of necessity, and any conditions for accomplishing the work. The written decision must be filed with the town clerk within 10 days. 19 V.S.A. § 923(4). The selectboard should inform the affected property owner(s) that, within 10 days, the written decision will be filed and available in the clerk’s office and that a copy will be sent in the mail.

VLCT recommends that the selectboard withhold any decision on damages until the town’s work has been completed. To this end, the selectboard should announce at the emergency hearing that the hearing will be continued and reconvened at a date and time certain (preferably at least 15 days later to ensure that the work has been completed) to take additional testimony regarding damages. At the reconvened hearing the selectboard will take testimony and make a decision regarding the value of the property taken or damaged.

Is the town responsible for repairing culverts in the right-of-way that lead to private driveways?

As is the case with most legal answers, it depends. Municipalities are responsible for repairing culverts and are liable for any damage resulting to a person or their property if it fails to do so. The applicable statute reads, in relevant part, "If damage occurs to a person, or his or her property, by reason of the insufficiency or want of repair of a bridge or culvert which the town is liable to keep in repair, the person sustaining damage may recover in a civil action." 19 V.S.A. § 985(a). The operative language here is "culvert which the town is liable to keep in repair." Because Title 19 provides municipalities with the authority to control, through issuance of a permit, construction or development projects that occur in, or affect, the public right of way, the selectboard may grant permission to others to place culverts within the highway right of way [See 19 V.S.A. § 1111], making them, not the town, liable for their repair.

This statute does not explicitly address the issue of the responsibility for maintaining and repairing driveway culverts, but it follows that if a culvert has been placed in the highway right of way with the permission of the selectboard under this statute, then the party placing the

culvert, or their successor, should be responsible for its repair and maintenance, unless the town has made some representation to take ownership or responsibility for the culvert. Such a representation should be clearly delineated in a highway access, curb cut, or culvert policy as well as in the permit itself, if one was granted. Much of this analysis then will turn on where the culvert is located (private v. public property), who placed it there, who has maintained and repaired it over time, what if any permits were granted for its installation, repair, and replacement, and what policy, if any, applies.

Such policies may condition approval for the placement of a culvert in the highway right of way upon applicants taking responsibility and/or paying the costs of installing and/or maintaining the culvert as well as assuming full responsibility for any liability that may attach. Such policies may also include a provision regarding the municipality's authority to remove the culvert. When a municipality does little more than permit the applicant to install a culvert and has no maintenance obligations (i.e., a culvert within a private subdivision), it should refrain from doing any acts of maintenance and repair as those acts could be interpreted as acts of acceptance, which in turn would deem the culvert public. This is all in keeping with our model VLCT Highway Access Policy and Guidance, which provides, amongst things:

Section 11 -- Responsibility for culverts and headwalls Culverts and headwalls installed on private property, even when located within the municipal right of way, are the responsibility of the property owner. Property owner retains exclusive legal and financial responsibility to repair, replace, and maintain those culverts and headwalls. Nevertheless, property owner must obtain permission from the Town in the form of a written Notice of Permission to Proceed before any repair or replacement may take place.

What if it is a culvert that the town is “liable to keep in repair?”

Generally, the principle of sovereign immunity will protect towns from tort liability (e.g., negligence, trespass, nuisance) in cases where they are performing governmental (such as maintaining roads, bridges and culverts) as opposed to proprietary functions. An exception to this affirmative defense applies when a town receives notice or knew or should have known of the existence of a defective culvert. "If a town does not repair a passage constructed for a natural stream after receiving notice that the passage is blocked, municipal immunity will not bar recovery for damages caused by the town's failure to take remedial action.” Graham v. Town of Duxbury, 173 Vt. 498 (2001). In other words, a town will not be immune from liability if it fails to repair a culvert or bridge constructed for a natural stream after receiving notice that

it is blocked. Although a town may be liable for subsequent damage to surrounding property after receiving notice of a problem concerning a natural stream and not taking action to remedy it, towns remain immune from liability where the damage complained of is caused by negligently maintained surface water drainage systems installed to protect the town's roads. In the case cited, the town of Duxbury was not held liable for damages suffered from want of repair of a culvert that it was liable to keep in repair because the drainage system in place protected the road from water runoff and it cleared the culvert the day after being notified that it was blocked. The difference in how the law assigns responsibility lay in the fact that the maintenance of a culvert to carry away surface water is for the protection of a highway and hence a governmental function for which the town is not liable whereas a town has no implied authority to dam up a natural water course. Consequently, if a town allows the obstruction of a natural watercourse to persist and that obstruction results in the flooding of privately owned property then that would constitute a taking of private land for a public purpose for which compensation must then be paid.

Are we liable (legally responsible) for damage caused by excessive water run-off from our town highways?

Vermont follows the civil law doctrine of water which prohibits an upper landowner from increasing the drainage, and thus the burden, on a lower landowner. This means that a town cannot actively direct water onto an adjoining landowner's property. In applying this rule of the law, the Vermont Supreme Court has stated that "an upper property owner cannot artificially change the manner of flow by discharging it onto the lower land at a different place from its natural discharge." Canton v. Graniteville Fire District No. 4, 171 Vt. 551 (2000). Doing so could expose the Town to liability for trespass as well as a takings claim.

Concerning a municipality's responsibility regarding drainage, a town also cannot employ a culvert to intentionally divert water from a natural watercourse and cause it to flow upon private property. Similarly, a town cannot collect and channel surface water onto a private property owner's land in quantities that are greater than or in a manner different from its natural flow. In other words, a town cannot actively direct water from a right of way onto a property owner's land in an unnatural manner. However, if the water would otherwise flow there naturally (as it would in a flood event) and the highway or highway drainage directs the water to its natural watercourse, then the town would likely not be liable for any damage it causes. The closer a town comes to directing surface water into pre-existing natural waterways and drain ways the less likely liability will attach.

Trees

A public shade tree was damaged during the storm and poses a risk to a resident's property. Do we have to hold a hearing to cut it down?

No. Even if the subject tree is a "shade tree" (a shade tree is defined by the law as "a shade or ornamental tree located in whole or in part within the limits of a public way or public places, provided the tree: was planted by the municipality; or is designated as a shade tree pursuant to a municipal shade tree preservation plan…" 24 V.S.A. § 2501a(3)), that would not prevent a town from cutting or removing a tree if it poses a hazard to public safety. 24 V.S.A. §§ 2504(a), 2509(a)(2). For more information about Vermont's tree law, please see our Tree Law FAQ's.

Town Finances

In the short term, how do we pay for flood-related expenses?

In the shortest and most immediate term, a selectboard has limited authority to transfer money between line items to make funds available for flood-related expenses. In doing so, the board should make sure that the transfer and use of these funds is not legally restricted. For example, there are restrictions on the use of reserve funds (24 V.S.A. § 2804), conservation funds (24 V.S.A. § 4505), impact fees (24 V.S.A. §5203), trust moneys (24 V.S.A. §2431), water and sewer funds (24 V.S.A §§ 3616, 3313), and grant moneys. The Municipal Assistance Center can answer specific questions about the temporary use of restricted funds for non-authorized purposes and the scope of the selectboard's limited authority to transfer money between budget line items for unrestricted funds.

In the longer term, selectboards have authority to borrow money to pay for current municipal expenses without voter approval, so long as the term of the loan does not exceed one year. 24 V.S.A. § 1786. Under this authority, selectboards should be able to secure a non-revolving

line of credit from a lender which the selectboard can draw upon to pay flood-related expenses. As federal and state reimbursements and insurance settlements become available, that money can be used to pay down the line of credit. If at the end of the year such reimbursements and settlements are not sufficient to cover the entire balance of the town's obligation, an appropriation to retire the resulting deficit can be made through the next annual municipal budget or at a special town meeting, or the debt can be refinanced by borrowing or bonding in accordance with the processes set out in Chapter 53 of Title 24. If none of these occurs, the selectboard is authorized, when making up the next annual tax bill, to impose a mandatory deficit curing tax to "provide sufficient revenue to liquidate such deficit." 24 V.S.A. § 1523(a).

There are also several other instances in which a selectboard can borrow money without voter approval, including for the purchase of tools, equipment, and materials used in the construction, maintenance, and repairs of highways and bridges, so long as the term is for five years or less. 19 V.S.A. § 304(a),(3); 24 V.S.A. § 1786a(b). For other instances when such borrowing is possible, see our article, "When Can the Legislative Body Borrow Money Without Voter Approval?" for other instances when such borrowing is allowed.

Are donations made to a town for emergency management purposes tax-deductible?

Most likely, yes. Municipalities are tax exempt entities under Section 115(2) of the Internal Revenue Code. Furthermore, municipalities are authorized under 20 V.S.A. § 17(b) to receive services, equipment, supplies, materials, or funds by way of gift, grant, or loan donated for purposes of emergency management. Under Section 170 of the Internal Revenue Code, charitable deductions can be taken by a person who makes a contribution or gift exclusively for public purposes to any state political subdivision. 26 U.S.C. § 170(c)(1). Contributions to support a municipal fire department or rescue squad or even to assist in the cost of repairing town buildings or infrastructure damaged as a result of the flooding should be tax deductible. There is no requirement to provide documentation of this gift or to provide the donor with the municipality's Federal I.D. number. However, it would probably be a good idea to provide a receipt with the municipality's name on it, its tax-exempt status [Section 115(2)], the amount and purpose of the donation, the date it was made, and whether anything of value was received in return.

Relatedly, every selectboard has the legal authority to "apply for grants and may accept and expend grants or gifts above those which are approved in the town budget" without prior voter

authorization. 17 V.S.A. § 2664. Though the selectboard must include a description of all grants or gifts accepted during the year and associated expenditures in its annual (i.e., town) report.

Residents have asked about making cash donations to the town for redistribution to local individuals, families and businesses impacted by the flooding. Would donations made to a town flood relief fund be tax deductible?

Probably not. Donations made to a municipality for redistribution to specific individuals, families and businesses likely will not meet the public purpose standard in Section 170 of the Internal Revenue Code. VLCT recommends that donors wishing to make a deductible gift be encouraged to support one of the numerous charitable organizations working to assist Vermont flood victims.

All potential donors should review Internal Revenue Service (IRS) Publication 526 and consult with their own tax advisor.

Tax Abatement

Can property owners request tax relief due to flood damage?

Yes. Abatement is the process for relieving taxpayers from the burden of paying property taxes, water charges, sewer charges, interest, and/or collection fees. Abatement is granted when the request is authorized by statute and when the board, in its discretion, agrees that the request is reasonable and proper. The board of abatement has the authority to abate town taxes and statewide education property taxes. However, if a board abates statewide educational property taxes, the town is still obligated to the State for the full amount of statewide educational taxes due. For more information about tax abatement, especially handling a large number of abatement requests, please see our abatement article related to the State of Emergency.

Can we reopen grievances if the deadline for filing has already passed?

Yes, we think so. Title 20, Section 47 states, in relevant part, that “[d]uring a state of emergency declared under this chapter, a municipal corporation may: … extend any statutory

deadline applicable to municipal corporations, provided that the deadline does not relate to a license, permit, program, or plan issued or administered by the State or federal government…" (Emphasis added). Note that municipalities have the option of extending such deadlines; they are not required to do so.

One could argue that you wouldn't be "extending" this particular deadline (since it's already passed), but rather you'd be reopening the initial grievance period (which in turn would reopen the appeal period to the Board of Civil Authority). However, this statute was enacted to give municipalities the flexibility to afford residents, who are otherwise preoccupied with recovery efforts during a State of Emergency, relief from unforgiving regulatory deadlines. Therefore, we don't foresee a court second-guessing a municipality's use of discretion in using its provisions for that purpose. One could just as easily argue that whether a deadline is continued while open or reestablished once closed, the result is the same, the deadline is "extended" as taxpayers are afforded additional time to take action. Also keep in mind that this is a very new law (it was enacted right after COVID) so it has yet to be tested in court.

Can we delay the start of our tax assessment appeal hearings?

Yes. The law on tax assessment appeals ordinarily requires the Boards of Civil Authority (BCAs) holding their hearings 14 days after the last day allowed for notice of appeal (this deadline is automatically extended by operation of law for another 30 days for those towns with a population under 5,000 inhabitants (total of 44 days) and another 50 days for those with a population of 5,000 or more (total of 64 days)]. 32 V.S.A. §§ 4403, 4341.

It's important to note however that all the VT Supreme Court requires of BCA's is to "initiate" their hearings within this timeframe, not "complete" them, which they can accomplish by opening each hearing and continuing them to some date, time, and place later on. *Rhodes v. Town of Georgia*, 166 VT 153 (1997).

Regardless, State law does permit towns, during a state of emergency, to "extend any statutory deadline applicable to municipal corporations, provided that the deadline does not relate to a license, permit, program, or plan issued or administered by the State or federal government . . .." Vermont Governor Scott declared a state of emergency (Executive Order No. 03-23) on July 9, 2023. This deadline would be extended by act of a majority of the BCA present at a duly warned, public meeting. Towns would need to act fast because once the state of emergency expires, so does this temporary authority to extend any statutory deadline,

including that governing the holding of tax assessment appeal hearings. Of course, if the deadline for tax assessment appeal hearings is extended, notice will need to be sent out anew.

Our Board of Civil Authority (BCA) is in the midst of hearing property tax assessment appeals. Do they have to inspect the interior of properties damaged by the flood?

No. The law on tax assessment appeals ordinarily requires that each property which is the subject of an appeal be inspected by a committee of not less than three members of the Board of Civil Authority (BCA) and that failure of an appellant (the taxpayer appealing their assessment) to allow an inspection will result in the appeal being deemed withdrawn. Alternatively, failure of a BCA to conduct an inspection ordinarily would result in reinstating the previous year's grand list value. 32 V.S.A. § 4404(c).

During a declared state of emergency, a BCA within a municipality affected by an all-hazards event, such as a flood, is not required to physically inspect a property that is subject to an appeal. If an appellant requests in writing that a property be inspected, a member of the board must conduct the inspection electronically. If the appellant does not facilitate the inspection electronically, the appeal is deemed to be withdrawn. 32 V.S.A. § 4404(c)(2).

Does this law (32 V.S.A. § 4404(c)(2)) apply to every municipality?

No, just those affected by the flooding. The law references a municipality "affected by an all-hazards event" which is defined in 20 V.S.A. § 2(1) as meaning "any natural disaster, health or disease-related emergency, accident, civil insurrection, use of weapons of mass destruction, terrorist or criminal incident, radiological incident, significant event, and designated special event, any of which may occur individually, simultaneously, or in combination and that poses a threat or may pose a threat, as determined by the Commissioner or designee, to property or public safety in Vermont."

Do we still have to submit an inspection report if we don't perform an inspection?

No. A committee of not less than three BCA members that inspected the subject property would ordinarily have to report back to the full BCA within 30 days from the hearing on the appeal. However, if there is no inspection, then there is nothing to report and it would not be required.

Are there any circumstances under which a BCA would have to conduct a site inspection?

Yes. If the appellant (the taxpayer appealing their assessment) requests in writing that their property be inspected, then the BCA must conduct the inspection through electronic means.

What qualifies as “electronic means” for purposes of a requested site inspection?

The law defines “electronic means” as “the transmittal of video or photographic evidence by the appellant at the direction of the Board members or hearing officer conducting the inspection.” 32 V.S.A. § 4404(c)(3). If the appellant (the taxpayer appealing their assessment) does not facilitate the inspection through electronic means, then the appeal must be deemed withdrawn.

Can we choose to conduct a physical inspection even if it’s not required?

Yes. The controlling law states that a BCA isn’t required to physically inspect properties, not that it cannot. However, you should not enter any property that has sustained flood damage and presents a danger to human life. This law was passed so that the BCA doesn’t have to inspect properties, and not inspecting is the preferred course of action. If, however, a BCA wants to physically inspect a property, this law doesn’t prevent it from doing so. A refusal by an appellant to allow for an inspection, whether physical or by electronic means, would result in deemed withdrawal.

If the appeal is deemed withdrawn, must the BCA still issue a written decision?

Yes. The decision should state the basis for the deemed withdrawal (e.g., the appellant refused a site inspection) and that this action(s) resulted in the appeal being deemed withdrawn. It is not a denial, it is the appellant withdrawing the appeal by their actions so this should be reflected in the written decision.

Water and Sewer Disconnections

Can we disconnect delinquent users of our water and sewer services for non-payment?

No. A municipality that runs a public water or sewer system is prohibited from disconnecting any person from those services during a declared state of emergency, if the state of emergency was called in response to an all-hazards event (e.g. a flood) that will cause financial hardship and the inability of ratepayers to pay for water or sewer services except to

protect the health and safety of the public. 24 V.S.A. 5152(a). A municipality may temporarily disconnect water or sewer services during the declared state of emergency when the temporary disconnection is necessary for the maintenance or repair of the water or sewer system. 24 V.S.A. 5152(b)

Does this law apply to every municipality?

Yes, as it applies whenever a state of emergency is declared in response to an all-hazards (e.g. flood) event.

Extending or Waiving License, Permit, Programs, or Plan Deadlines

Can towns provide an extension for any expiring permits and licenses?

Yes. In summary, 20 V.S.A. § 47 states that: 1) towns can extend any deadline that applies to the town itself; 2) towns can extend or waive deadlines applicable to any licenses, permits, programs, or plans it issues; and 3) any license, permit, program, or plan that expires during the declared state of emergency automatically remains valid for 90 days after the date that the state of emergency expires.

Consequently, a town, by act of its legislative body (e.g. selectboard, city council, board of trustees, etc.) at a duly warned meeting, can extend or waive any deadline applicable to a license, permit, program or plan it issues beyond the automatic 90-day extension. We recommend the legislative body extend them by a certain amount of time; if the time period ends up being insufficient, the law would allow further extension or waiver of these deadlines so long as the decision to extend was made while the declared state of emergency is still in effect. If the legislative body does not affirmatively extend or waive a deadline, note that any expiring license, permit, program, or plan it issues which is due for renewal or review during the emergency will automatically remain valid for 90 days after the date the declared state of emergency ends.

It should be noted that this law doesn't only apply to zoning related permits and approvals. It applies to "any license, permit, program, or plan issued by a municipal corporation..." This is

very broad language and is, on its face, equally as applicable to special event permits, curb cut permits, dog licenses, and expiring town plans as it is to zoning permits. However, it does not apply to liquor licenses which are technically issued by the State, as the law doesn't apply to deadlines related to any State licenses, permits, programs, or plans.

For municipal deadlines related to State licenses, permits, programs, or plans to be extended, municipalities should reach out to applicable State agencies and the Governor's Office. The Governor's Declaration of State of Emergency gives him the authority to suspend relevant rules and permitting "to the extent necessary to respond to the conditions created or caused by this impending storm to conduct hazard mitigation, support response and recovery efforts to alleviate hardship and suffering of citizens and communities and preserve public safety and property of the State."

Can towns extend our tax grievance and assessment appeal hearing deadlines?

Yes. Title 20, Section 47(a) states that "(d)uring a state of emergency … a municipal corporation may: extend any statutory deadline applicable to municipal corporations, provided that the deadline does not relate to a license, permit, program, or plan issued or administered by the State or federal government." Since the statutory deadlines for holding tax grievance and assessment appeal hearings are applicable to municipalities and their tax assessment program, they may be extended by act of its legislative body at a duly warned meeting.

Zoning and Permitting

What happens if we cannot run our zoning department and, therefore, cannot process applications for development review?

State law provides that zoning administrators have 30 days to act on a complete application by either issuing a decision or making a referral to an appropriate municipal panel (e.g. planning commission or zoning board of adjustment/development review board exercising development review authority). 24 V.S.A. § 4448(d). Failure to act in the time prescribed by law could render an application "deemed approved." Additionally, the law requires appropriate municipal panels to set a date and place for hearings for all zoning administrator appeals to begin within 60 days from the date the appeal notice is filed. 24 V.S.A. § 4468. Hence, the

primary question that arises when a town limits its zoning office is whether this will result in deemed approval of zoning applications received during this time.

Note that deemed approval is not automatic. It is an equitable remedy which must be asserted in the Environmental Division of Superior Court to address unreasonable delays in the permitting process. It does not mean that an applicant could otherwise begin development without a permit issued by the zoning administrator. Furthermore, we think the law (see above) allows the zoning administrator to extend the (30 days) deadline to act on a complete application.

MAC's opinion is that if access to the town office has been limited, then applications cannot be received and processed by the zoning administrator to ascertain whether they are complete. Therefore, the remedy of deemed approval would be inapplicable to applications received during an office closure. This opinion is consistent with Environmental Division holdings that this remedy does not apply to incomplete applications. See *In re McLaughlin*, Docket No. 42?2?05 Vtec, slip op. at 8 (Vt. Envtl. Ct., Mar. 13, 2006), *Grand View Site Plan Application*, Docket No. 161-08-05 Vtec.

Despite that opinion, we recommend that zoning administrators continue to receive, process, and even act on applications remotely, if possible. This includes referring applications to the appropriate municipal panel for hearings.

Can we postpone public hearings required to be held to adopt/amend/repeal town plans and zoning bylaws?

Yes. Title 20, Section 47(b) explicitly allows towns to extend these deadlines indefinitely during the declared state of emergency. Specifically, the law states, "(d)uring a state of emergency declared under this chapter, any expiring license, permit, program, or plan issued by a municipal corporation that is due for renewal or review shall remain valid for 90 days after the date that the declared state of emergency ends. "

An example of such a deadline includes the timeframe by which a selectboard must hold a public hearing on a proposed town plan or amendment. State law ordinarily would require a selectboard to hold a public hearing on a proposed town plan or amendment not less than 30 days, nor more than 120 days from the date it is submitted by the planning commission. This law permits a selectboard, at a duly warned meeting, to extend the hearing deadlines by a

certain amount of time. If the time period ends up being insufficient, the law allows further extension or waiver of these deadlines during the declared state of emergency.

This provision also allows towns to hold off on warning hearings to adopt, amend, or repeal a town plan or bylaw amendments without running afoul of statutory deadlines for noncompliance. However, if action is taken during the declared state of emergency, it appears as though the regular notice requirements (e.g., 24 V.S.A. § 4444) will still apply.

Can an appropriate municipal panel cancel or postpone hearings for development review that have been warned?

Yes. An appropriate municipal panel has authority to control its meeting schedule and postpone hearings. Once an application has been referred by the zoning administrator, the appropriate municipal panel can hold off warning the hearing unless its local land use regulations require otherwise. Other than appeals of the zoning administrator, there is no statutorily prescribed timeframe for when a hearing for development review must be held. If a hearing has already been warned but not yet opened, the appropriate municipal panel can cancel it as a precaution and to protect public safety. When the threat passes and hearings are resumed, they must be warned anew.

We recommend notifying all interested parties in the same manner they were notified of the hearing and in more ways, if possible. If a hearing has been continued to some date in the future and the continued hearing is canceled, the hearing must be warned anew. For appeals of zoning administrator decisions, the appropriate municipal panel can always warn the hearing to occur within the prescribed 60-day timeframe, only to meet at that time by electronic means, open the hearing, and continue it to a date, time, and place certain.

What if the appropriate municipal panel cannot issue hearing decisions in a timely manner?

Similar to applications before the zoning administrator, an appropriate municipal panel must issue a decision on an application within 45 days after the close of a hearing or an application may be deemed approved. 24 V.S.A. §4464(b)(1). Since the 45-day deadline for appropriate municipal panels only applies to when a hearing is closed, the deemed approval clock will not start ticking until a hearing is held. In this instance, it would be wise for the town to postpone (or continue) hearings until the public safety hazard has been abated.

If the town office is closed, then the town should provide widespread notification of scheduling decisions and let people know that permit applications will not be considered received or reviewed for completeness until the office is reopened, at which time they will be processed as expeditiously as possible.

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