

MINUTES  
CITY COUNCIL LEGISLATIVE SUBCOMMITTEE MEETING  
EILEEN DONDERO FOLEY COUNCIL CHAMBERS, CITY HALL, PORTSMOUTH  
**MONDAY, JUNE 13, 2016**  
**8:30 A.M.**

I. Call to Order

Mayor Blalock opened the meeting at 8:30 a.m. and noted that it was being televised and recorded. He asked everyone to introduce themselves for the public.

Present: Mayor Jack Blalock; Assistant Mayor Jim Splaine; Councilor Chris Dwyer; State Senator Martha Fuller Clark; State Representatives Pamela Gordon and Laura Pantelakos; Staff Present: City Manager John Bohenko; Assistant City Attorney Jane Ferrini; and Recording Secretary Valerie French.

II. Distribution of draft Minutes from May 2, 2016 meeting.

Senator Clark moved to approve the minutes as presented. Seconded by Representative Pantelakos and voted.

III. Discussion.

A. Status update on I-95 Barrier for Sherburne Neighborhood in Ward 3 – Public Works

City Manager Bohenko introduced Public Works Director Peter Rice and Transportation Engineer Eric Eby.

Engineer Eby reviewed a handout regarding Noise Analysis by the NH DOT. The document is attached and incorporated into the Minutes. He explained the difference between a Type I project which are generally those which involve the addition of a new roadway, or the physical alteration of an existing roadway and a Type II project, which are designed solely for the purpose of traffic noise abatement in areas where no highway improvements are scheduled. He stated that the NH DOT does not have a Type II noise policy and therefore does not usually evaluate areas where projects are not proposed. He stated the State is supposed to have a Type II policy in order to apply for federal funding, but it does not.

Representative Pantelakos stated they have been working on this sound barrier for Panaway Manor since the beginning of the highway project but they change their policies frequently so it has been frustrating.

Senator Clark asked if the Dept. of Transportation has given any reason why we don't have the policy in place. Mr. Eby replied no.

Senator Clark stated we can look into getting money from Capital budget for funding as well but it would be helpful to be able to figure out the cost when applying for those funds.

Public Works Director Rice stated that the previous DOT Commissioner had indicated a willingness to adjust policies but has since moved on and they are not sure about the new Director. He stated he would estimate anywhere from \$1-2 million in cost depending on conditions.

Representative Pantelakos asked if there is any design yet and has heard of a relatively inexpensive version that has worked in other areas. Public Works Director Rice stated there is no design yet which is why there is a wide range of potential cost.

Councilor Dwyer stated it would also be important to know if there are other communities that have this issue as well and would also like to get this introduced in September.

Senator Clark stated that they will meet with the new DOT Director first before introducing legislation and feels that if we are able to get federal funding for this, then they would be willing to do it. Public Works Director Rice stated this is a renewed focus of something they have been working on for a long time.

Assistant Mayor Splaine stated this was a big issue of the neighborhood when he did his neighborhood walk of Panaway Manor and there are other areas of the city that deal with it as well. He stated he has also heard there are less expensive options and feels that these people all pay taxes and it is important to resolve this issue for them. He stated the City should do a study to determine the impact areas, the types of terrain that will be impacted i.e., ledge, marshland, etc. and if it keeps being put off by the State, then it should be in the City's Capital Improvements Plan.

City Manager Bohenko stated we have taken up the slack for the State in many ways and once we do, they never look back. He stated that the State should have a noise barrier policy. At the request of the committee members, City Manager Bohenko stated he will send a map with parameters and linear footage to the delegation in advance of their meeting with the DOT Director.

Representative Pantelakos stated that Rockingham Avenue should also be included but has been ignored in the past because there aren't enough houses on the street and agrees with City Manager Bohenko that the State should not be let off the hook.

- B. Status update of policies submitted to NHMA. Committees have recommended policies and they will be mailed out in late June in advance of NHMA Policy Conference scheduled for September 23, 2016

Assistant City Attorney Ferrini stated that the committee has recommended some policies that the towns and cities will receive outlines by the end of June and the vote will take place in September.

Councilor Dwyer, who is a member of the policy committee, explained that there is an issue with having the towns be able to talk about legislation on a broader level for the good of the State as a whole and feels they have a narrow view of the effects on cities.

Senator Clark stated there had been an effort to get the cities together and asked if that had gone forward at all.

City Manager Bohenko suggested reaching out to Judy Silva of NHMA and remind them that the 13 cities also pay dues and would like them to develop the policy.

C. Discussion with Committee and Delegates regarding bills signed by Governor:

Assistant City Attorney Ferrini reviewed the bills that have been signed by Governor Hassan to date noting that the Committee has discussed most of these at previous meetings:

- Accessory Dwellings – Chapter 6/SB 146
- Right to Know – Chapters 29 and 30/HB 1418 and HB 1419
- Tax Deeds – Chapter 37/HB 1219
- Criminal Record Check School Employee and Volunteer – Chapter 117/SB 152
- Employer Reporting Requirement – Chapter 110/HB 1352
- Municipal Permit fees for Electrical Charting Stations – Chapter 99/SB 359
- Utility Trailer Registration – Chapter 93/HB 1655
- Planning Board Applications – Chapter 81/HB 1202
- Calculating Adequate Education – Chapter 8/SB 227
- Net Metering – Chapter 31/HB 1116 and Chapter 33/SB 378
- Medicaid Expansion – Chapter 13/HB1696

Discussion ensued regarding the Accessory Dwellings law and the lack of ability to place municipal control to address the Air BnB issue. City Manager Bohenko stated he is concerned with the life safety aspect and had wanted something to address that included.

Next, discussion ensued regarding the Medicaid expansion which has resulted in a decrease in impact on local welfare services. City Manager Bohenko asked if the County pays for Medicaid because there is a dollar amount in their budget for Medicaid. Representative Pantelakos stated it could be in reference to the County nursing home. Representative Gordon later presented a State of New Hampshire map with Medicaid figures per city/town to be included with the minutes.

D. Discussion with Committee and Delegates regarding bills passed, but not yet signed by Governor:

Assistant City Attorney Ferrini reviewed the bills that have passed but have not yet been signed by Governor Hassan to date noting that the Committee has discussed most of these at previous meetings:

- HB 1697 – Uber Bill
- SB 411- Merged Lots
- SB 482 - Short-time rentals
- HB1590 - Short term rentals
- HB 1428 – SAG funding and funding police standards
- HB 1395 record retention

- HB 606 – Right to know no charge review of electronic record
- HB 285 – right to know to allow review of legal advice in non public without counsel present
- HB 2016 – funds from DOT for bridge aide
- HB 1198 – valuation of poles and conduits
- HB 430 – veterans' credit
- SB 364 – Complete streets
- HB 1293 – Charter Amendment
- HB 345 – Agritourism
- SB 509 – Voter Challenge affidavit

Discussion ensued regarding HB 1697, Uber bill with Attorney Ferrini stating that this bill will become effective immediately upon signing and will be dealt with at the State level.

Assistant Mayor Splaine stated that this will not deal with taxis so the City will still need to decide what to do with the taxi businesses and suggested notifying the police department of the impending law so they will understand what they will need to do with ride-share drivers in the future.

Next, Attorney Ferrini explained HB 285, which allows review of legal advice in non public session with a written opinion without requiring Counsel to appear in person.

Assistant Mayor Splaine stated that gives the option but he would assume that we wouldn't do that here in Portsmouth.

City Manager Bohenko clarified that we will always have our own attorney present, but not necessarily the attorney that rendered the opinion.

Regarding HB 430, Veterans credit, Attorney Ferrini explained it is enabling legislation to give a tax credit to any honorably discharged veteran having served 90 days or more.

City Manager Bohenko stated this is a policy discussion for the Council as it would have a big impact and is very significant as every dollar we give up, has to be made up somewhere else.

Finally, discussion ensued regarding HB 1590, short term rentals which defined short term rentals as rentals or one or more rooms in a residential unit for occupancy for tourists or transient use for less than 185 consecutive days and the lack of oversight for cities and towns. Senator Clark stated the definition was taken from the Department of Revenue in order to fit in with their regulations but a committee has been established to revisit this complex issue. Representative Pantelakos agrees that this is a life-safety issue as we will not know how many people or who is in the buildings. City Manager Bohenko stated his concern is with college students who often rent for under the 185 days.

- E. Discussion with Committee and Delegates regarding topics of bills of interest that were referred to interim study, special session, or killed:

Assistant City Attorney Ferrini reviewed the topics of interest that were referred to interim study, special session or killed:

- SB 497 – distribution of meals and rooms tax revenue
- HB 1214 - hotel occupancy
- HB 1689 – hotel occupancy (interim study)
- SB 421 – regarding municipal liability (interim study)
- HB 1687 and HB 1688 – increase municipal liability
- HB 1203 – vote on variances
- SB 346 – expanding polling hours
- SB 349 – Election of Chief election officer if City Clerk is non resident
- HB 1602 – prius tax (interim study)
- SB 485 law enforcement fund opiate crisis (special session June 16, 2016)

Representative Pantelakos explained that having issues go to interim study doesn't necessarily mean they will come back and is dependent on what the head of the Committee decides to do. Senator Clark stated that there is a report generated even if it is only to state that no study was done and the deadline is November 1<sup>st</sup>.

City Attorney Ferrini stated that something of interest to Cities is that the bill regarding electing a Chief Election Officer if the City Clerk isn't a resident will be definitely coming back next session.

Finally, they discussed the special session of June 16, 2016 regarding law enforcement funding of the opiate crisis with Representative Pantelakos stating that the amendments added to the previous bill killed it and they wanted to come back with a clean bill.

- F, Discussion with Committee and Delegates regarding issues of interest and potential bills for next session including but not limited to: plastic bags; meals and rooms tax revenue distribution; hotel occupancy fees; short term rentals

City Manager Bohenko stated that AirBnB enabling legislation is important as well as the \$1.00 per night hotel room surcharge. He stated we will need to talk to our land use boards and staff regarding the Accessory Dwellings.

Senator Clark asked if we have heard anything more on the plastic bags ban and if the City has any ability to implement a ban.

Mayor Blalock stated a letter has been sent to the Attorney General but we have not yet received any clarification.

Discussion ensued regarding the need to bring back the meals and room tax revenue distribution, hotel occupancy fees etc. as the funds need to be distributed more fairly to those who are collecting the taxes. Senator Clark asked that the information from the NH Office of Energy and Planning entitled "Planning for Accessory Dwelling" be included as an attachment to the minutes.

Senator Clark stated that bill filings can begin in early September and closes in December.

G. Discussion of next meeting

The next meeting of the full committee will be held on September 19, 2016 at 8:00 a.m. unless something comes up over the next few months that needs to be addressed and then it will be at the call of the Chair.

IV. Miscellaneous/Unfinished Business.

NONE

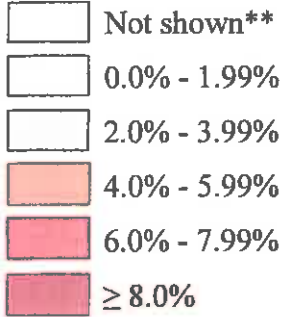
V. Adjournment.

Meeting adjourned at 10:00 a.m.

# Percent of Individuals Enrolled in the New Hampshire Health Protection Program by Town as of January 15, 2016

Total Enrollees = 46,404

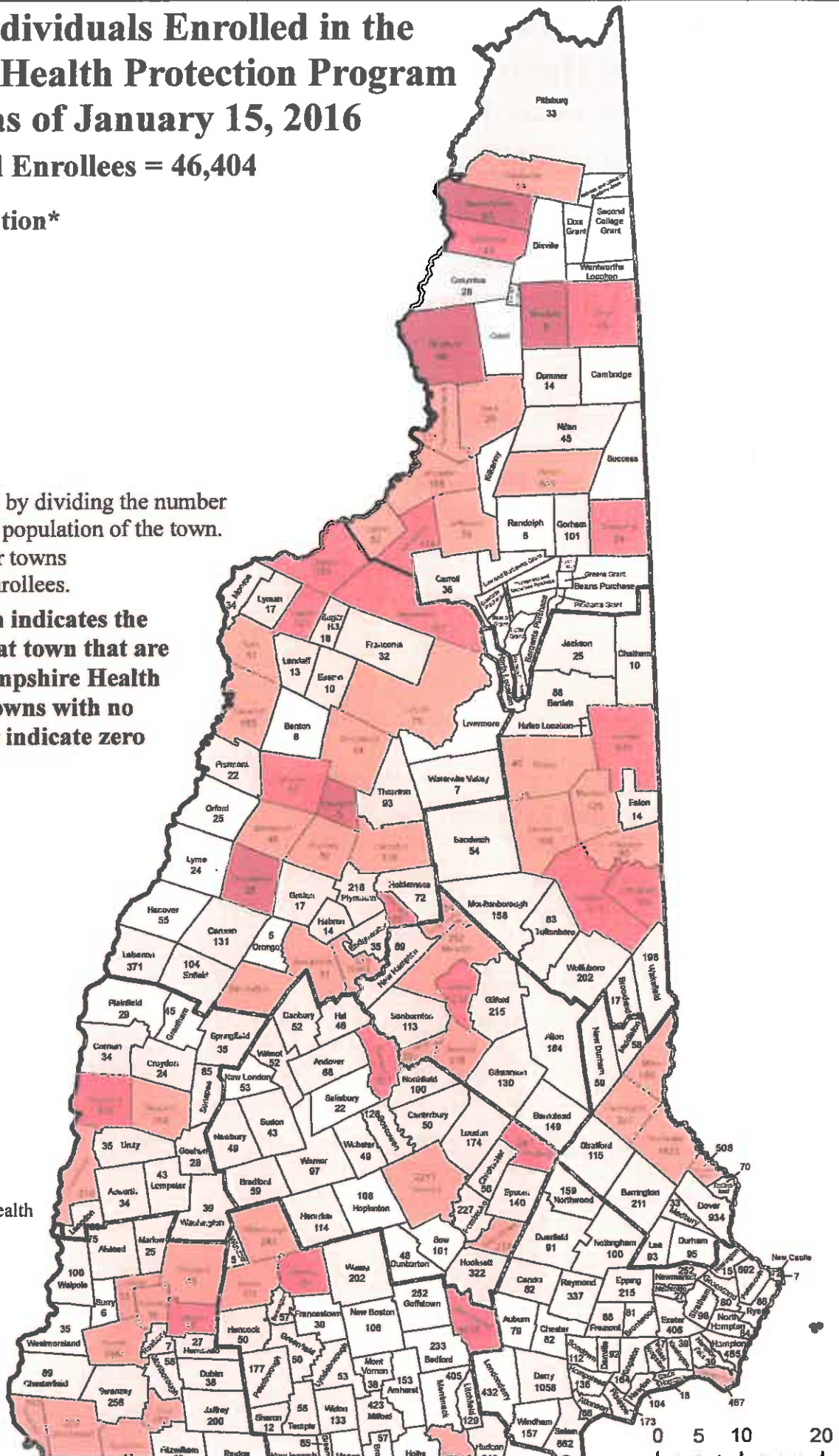
## Percent of Population\*



\*Percentage was derived by dividing the number of enrollees by the total population of the town.

\*\*Rate not calculated for towns with between 1 and 4 enrollees.

The number in the town indicates the count of people from that town that are enrolled in the New Hampshire Health Protection Program. Towns with no shading and no number indicate zero enrollees.



- Sources:
- New Hampshire Department of Health and Human Services
  - US Census Bureau

Prepared by: Tylor Young  
Geographic Information Systems Analyst  
tylor.young@dhhs.state.nh.us



# Percent of Individuals Enrolled in the New Hampshire Health Protection Program by County as of January 15, 2016

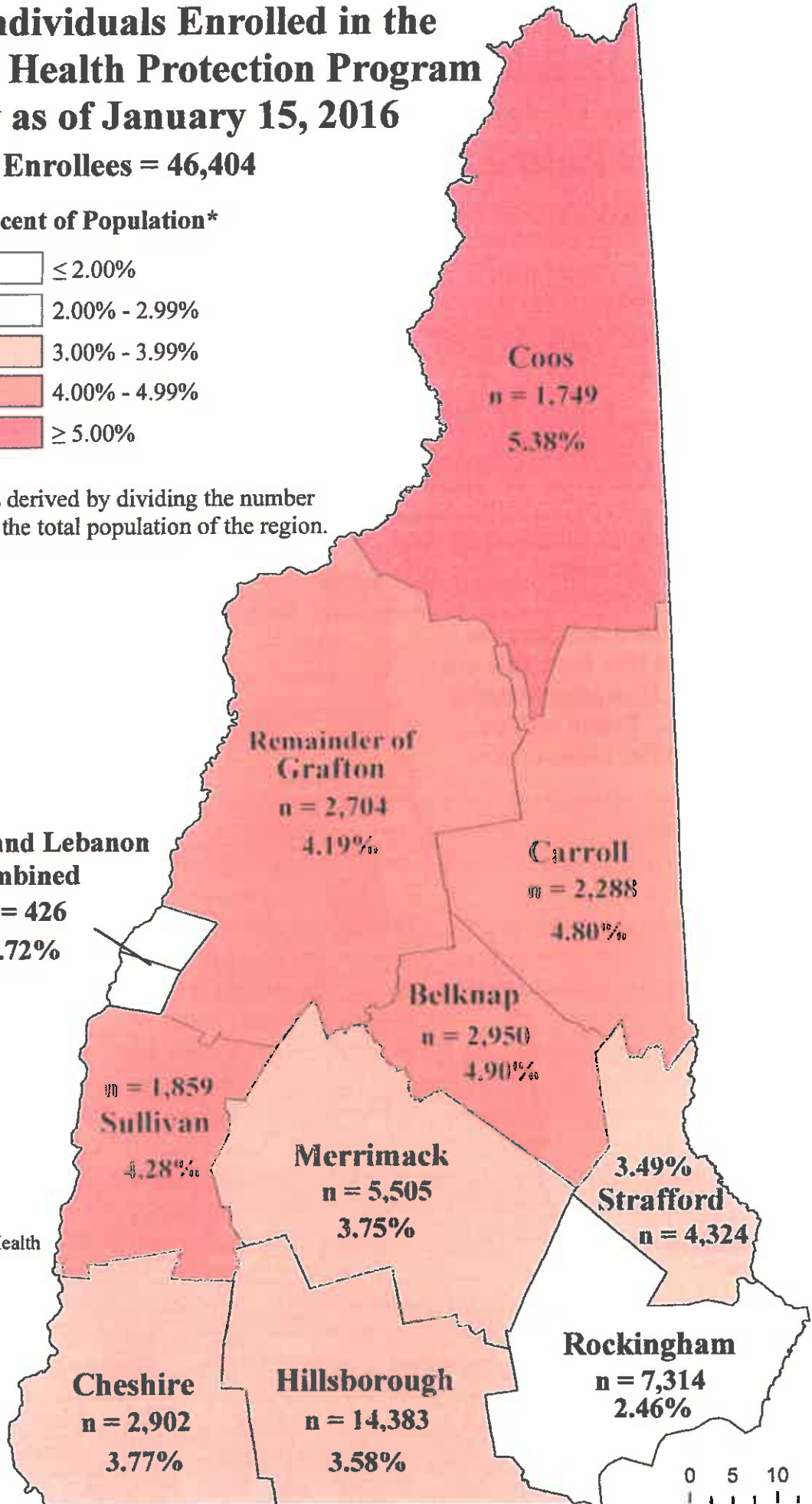
Total Enrollees = 46,404

## Percent of Population\*



\*Percentage is derived by dividing the number of enrollees by the total population of the region.

**Hanover and Lebanon Combined**  
n = 426  
1.72%



Sources:  
 •New Hampshire Department of Health and Human Services  
 •US Census Bureau

Prepared by: Tylor Young  
 Geographic Information Systems Analyst  
 tylor.young@dhhs.state.nh.us





## [Project Development](#) > [Environment](#) > [Program Management](#) > Air & Noise

### Air Quality

Our Air Quality section is currently being updated.

Additional Information:

[AASHTO Center for Environmental Excellence - Air Quality](#)

### Noise Analysis

New Hampshire has been evaluating the public impact of increased highway traffic noise since the development of the National Environmental Policy Act of 1969 (NEPA). The act required, among other aspects, evaluation of the impacts associated with improved and newly constructed roadways. The first noise abatement structure in New Hampshire was built in 1977 along Interstate 93 in Manchester. Since then numerous additional structures have been added throughout the state.



#### Abatement Eligibility

Noise abatement in New Hampshire is generally in the form of a sound barrier or berm.

The locations of these barriers are identified using a specific set of criteria set forth by the NH Department of Transportation (NH DOT) and the Federal Highway Administration (FHWA). An area is not considered eligible for noise abatement unless it meets ALL of the criteria set forth in the Department's [Noise Policy](#). The following are highlights of those criteria.

**Type I Project** - NH DOT considers an area eligible for the evaluation of noise abatement when impacts are associated with a Type I project. Type I projects are generally those which involve the addition of a new roadway, or the physical alteration of an existing roadway. Type II projects are those designed solely for the purpose of traffic noise abatement in areas where no highway improvements are scheduled. NH DOT does not have a Type II noise policy and therefore does not usually evaluate areas where projects are not proposed. As such, in order for an area to be considered eligible for noise abatement, there MUST be a Type I project scheduled in its immediate vicinity.

**Decibel Level** - Residential properties are considered for noise abatement when traffic noise levels reach or exceed 66 decibels (dBA). Commercial properties are considered for noise abatement when traffic noise levels reach or exceed 71 dBA.

**Feasibility** - A minimum of a 5 dBA insertion loss must be expected for at least 1 impacted receptor (home or business) in order for an area to be considered eligible for noise abatement. Despite this criterion NH DOT generally makes every reasonable effort to maximize the number of benefited receptors and to obtain a 10 dBA (or greater) decrease in sound levels after construction is completed. For safety and stability reasons, the structural portions of a barrier should not be in excess of 25 feet in height. Impacts to wetlands, endangered species, historic resources, recreational facilities and other area resources can also effect the feasibility of a particular abatement measure.

**Reasonableness:**

**Effectiveness:** In order for an abatement measure to be considered reasonable, it must meet one or both of the following effectiveness criteria.

**Cost Effectiveness:** Effectiveness can be determined by calculating the estimated cost of the abatement measure per benefited receptor. NH DOT estimates the cost of noise barrier construction to be \$30 per square foot. If the anticipated cost per benefiting receptor is expected to exceed \$45,000 the abatement measures would not be considered cost effective. (For example: A barrier proposed to be 1,200 ft. long and 15 ft. high would total 18,000 sq. ft. At a cost of \$30 per sq. ft., this barrier would be estimated to cost \$540,000. If this barrier were anticipated to provide at least a 5 decibel reduction to 13 receptors, it would cost \$41,538 per benefited receptor. As this anticipated cost per receptor is

less than \$45,000, the barrier would be considered cost effective.)

**Dimensional Effectiveness:** Effectiveness can also be determined by calculating the protective surface area per benefited receptor of a barrier or berm. Under this method, if the anticipated square footage per benefited receptor is expected to exceed 1,500 sq. ft. the abatement measure would not be considered reasonable. (For example: A barrier proposed to be 1,200 ft. long and 15 ft. high would total 18,000 sq. ft. If this barrier were anticipated to provide at least a 5 decibel reduction to 13 receptors, it would require 1,384 sq. ft. of barrier per benefited receptor. As the anticipated square footage per benefited receptor of this barrier is less than 1,500 sq. ft the barrier would be considered dimensionally effective.)

**Noise Reduction Design Goal** - In order for an abatement measure to be considered reasonable, it must be able to provide at least a 7 dBA noise reduction for at least 1 benefited receptor.

**Views of the benefited receptors** - Viewpoints from the entire project community, including benefited receptors, will be solicited for noise impacts and any noise abatement alternatives. If no objections to the proposed noise abatement are found at this level of public involvement, then the noise barrier will be deemed reasonable. If objections are identified, at least 51% of the total possible receptors (property owners and tenants) receiving at least a 5 dBA or greater noise reduction must be in support of an abatement alternative for it to be considered reasonable.

**Development History** - In order for an area to be evaluated for noise impacts it must contain development which is already in place or is permitted for development (as indicated by the issuance of a building permit or similar final approval from the local municipality) by the date of public knowledge (the date upon which design approvals are granted by the FHWA or NHDOT).

#### **Additional Information:**

[1996 NHDOT Noise Policy](#) - For projects approved prior to July 13, 2011

[2011 NHDOT Noise Policy](#) - For Projects approved on or after July 13, 2011

[FHWA Traffic Noise Information](#)

[AASHTO Center for Environmental Excellence - Noise](#)

#### **Contact:**

Jon Evans - Air & Noise Program Manager, [jevans@dot.state.nh.us](mailto:jevans@dot.state.nh.us)

New Hampshire Department of Transportation  
PO Box 483 | 7 Hazen Drive | Concord, NH | 03302-0483  
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**Noise Barrier.** A physical obstruction that is constructed between the highway noise source and the noise sensitive receptor(s) that lowers the noise level, including stand alone noise walls, noise berms (earth or other material), and combination berm/wall systems.

**Noise Reduction Design Goal.** The optimum desired dB(A) noise reduction determined from calculating the difference between future build noise levels with abatement, to future build noise levels without abatement. The noise reduction design goal shall be at least 7 dB(A), but not more than 10 dB(A).

**Permitted.** A definite commitment to develop land with an approved specific design of land use activities as evidenced by the issuance of a building permit.

**Property Owner.** An individual or group of individuals that holds a title, deed, or other legal documentation of ownership of a property or a residence.

**Reasonableness.** The combination of social, economic, and environmental factors considered in the evaluation of a noise abatement measure.

**Receptor.** A discrete or representative location of a noise sensitive area(s), for any of the land uses listed in Table 1.

**Residence.** A dwelling unit. Either a single family residence or each dwelling unit in a multifamily dwelling.

**Statement of Likelihood.** A statement provided in the environmental clearance document based on the feasibility and reasonableness analysis completed at the time the environmental document is being approved.

**Substantial Construction.** The granting of a building permit, prior to right-of-way acquisition or construction approval for the highway.

**Substantial noise increase.** One of two types of highway traffic noise impacts. For a Type I project, an increase in noise levels of 5 to 15 dB(A) in the design year over the existing noise level.

**Traffic Noise Impacts.** Design year build condition noise levels that approach or exceed the NAC listed in Table 1 for the future build condition; or design year build condition noise levels that create a substantial noise increase over existing noise levels.

**Type I Project.** (1) The construction of a highway on new location; or,

(2) The physical alteration of an existing highway where there is either:

(i) Substantial Horizontal Alteration. A project that halves the distance between the traffic noise source and the closest receptor between the existing condition to the future build condition; or,

(ii) Substantial Vertical Alteration. A project that removes shielding therefore exposing the line-of-sight between the receptor and the traffic noise source. This is done by either altering the vertical alignment of the highway or by altering the topography between the highway traffic noise source and the receptor; or,

(3) The addition of a through-traffic lane(s). This includes the addition of a through-traffic lane that functions as a HOV lane, High-Occupancy Toll (HOT) lane, bus lane, or truck climbing lane; or,

(4) The addition of an auxiliary lane, except for when the auxiliary lane is a turn lane; or,

(5) The addition or relocation of interchange lanes or ramps added to a quadrant to complete an existing partial interchange; or,

(6) Restriping existing pavement for the purpose of adding a through-traffic lane or an auxiliary lane; or,

(7) The addition of a new or substantial alteration of a weigh station, rest stop, ride-share lot or toll plaza.

(8) If a project is determined to be a Type I project under this definition then the entire project area as defined in the environmental document is a Type I project.

**Type II Project.** A Federal or Federal-aid highway project for noise abatement on an existing highway. For a Type II project to be eligible for Federal-aid funding, the highway agency must develop and implement a Type II program in accordance with section 772.7(e).

**Type III Project.** A Federal or Federal-aid highway project that does not meet the classifications of a Type I or Type II project. Type III projects do not require a noise analysis.

#### § 772.7 Applicability.

(a) This regulation applies to all Federal or Federal-aid Highway Projects authorized under title 23, United States Code. Therefore, this regulation applies to any highway project or multimodal project that:

(1) Requires FHWA approval regardless of funding sources, or

(2) Is funded with Federal-aid highway funds.

(b) In order to obtain FHWA approval, the highway agency shall develop noise policies in conformance with this regulation and shall apply these policies uniformly and consistently statewide.

(c) This regulation applies to all Type I projects unless the regulation specifically indicates that a section only applies to Type II or Type III projects.

(d) The development and implementation of Type II projects are

not mandatory requirements of section 109(i) of title 23, United States Code.

(e) If a highway agency chooses to participate in a Type II program, the highway agency shall develop a priority system, based on a variety of factors, to rank the projects in the program. This priority system shall be submitted to and approved by FHWA before the highway agency is allowed to use Federal-aid funds for a project in the program. The highway agency shall re-analyze the priority system on a regular interval, not to exceed 5 years.

(f) For a Type III project, a highway agency is not required to complete a noise analysis or consider abatement measures.

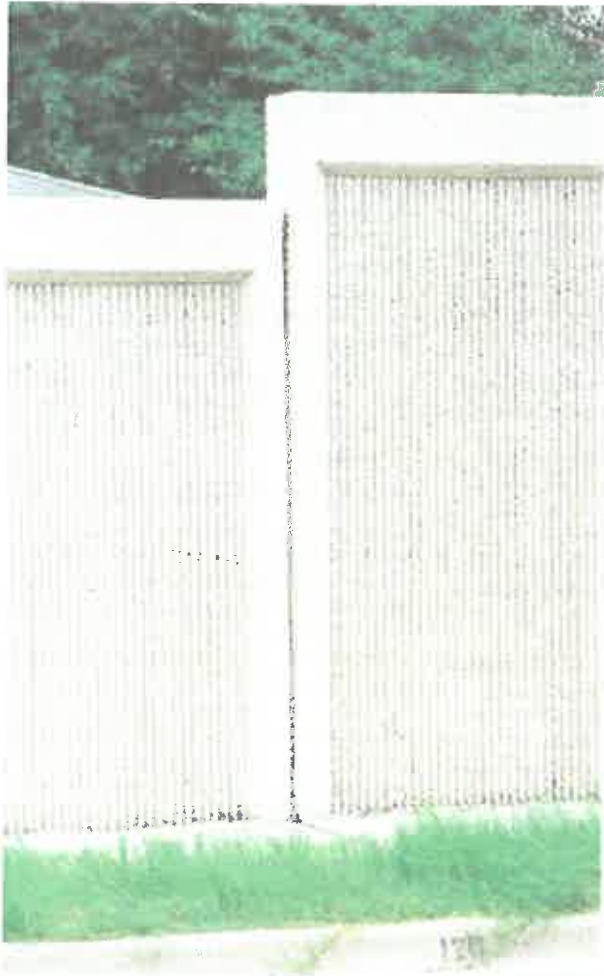
#### § 772.9 Traffic noise prediction.

(a) Any analysis required by this subpart must use the FHWA Traffic Noise Model (TNM), which is described in "FHWA Traffic Noise Model" Report No. FHWA-PD-96-010, including Revision No. 1, dated April 14, 2004, or any other model determined by the FHWA to be consistent with the methodology of the FHWA TNM. These publications are incorporated by reference in accordance with section 552(a) of title 5, U.S.C. and part 51 of title 1, CFR, and are on file at the National Archives and Record Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030 or go to <http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>. These documents are available for copying and inspection at the Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, as provided in part 7 of title 49, CFR. These documents are also available on the FHWA's Traffic Noise Model Web site at the following URL: <http://www.fhwa.dot.gov/environment/noise/index.htm>.

(b) Average pavement type shall be used in the FHWA TNM for future noise level prediction unless a highway agency substantiates the use of a different pavement type for approval by the FHWA.

(c) Noise contour lines may be used for project alternative screening or for land use planning to comply with § 772.17 of this part, but shall not be used for determining highway traffic noise impacts.

(d) In predicting noise levels and assessing noise impacts, traffic characteristics that would yield the worst traffic noise impact for the design year shall be used.



**Concrete noise wall**



**Metal noise barrier**



**Plywood noise barrier**



**Glue laminated post and plank noise barrier**



**Wood barrier:tongue and groove planking**



**Plastic noise barrier**



**Recycled rubber noise barrier**

photo #132



**Composite noise barrier**



**barrier surface treatment textures**



**Brick: surface texture**







# Planning for Accessory Dwellings

## Contents:

- 1 What is the New ADU Law?
- 2 What is the Purpose of the ADU Law?
- 2 How will ADUs be Regulated?
- 3 What if a Current Ordinance Differs from the Provisions of the New Law?
- 3 What if an Ordinance is Silent on ADUs?
- 4 What Standards May, Must Be or Must Not Be in Municipal ADU Regulations?
- 5 What about Detached ADUs?
- 5 What are the Next Steps?

## What is the New Accessory Dwelling Unit Law?

On March 16, 2016, Governor Hassan signed [Senate Bill 146](#), New Hampshire's Accessory Dwelling Unit (ADU) law, which takes effect on **June 1, 2017**. Under the new law, an "accessory dwelling unit" is defined as a residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

The new ADU law requires municipalities to allow *internal* or *attached* accessory dwelling units in all zoning districts where single-family dwellings are permitted. It establishes in state law that an *internal* or *attached* ADU is part of single-family use of a parcel, not a separate use.

The law also gives municipalities the option of permitting *detached* ADUs, which is an accessory dwelling in a building not attached to the primary single-family dwelling, such as in a garage, barn or other separate structure.

The new law also repeals the sections of [RSA 674:21](#) (Innovative Land Use Controls) that previously included and defined ADUs. If a municipality's ADU ordinance relies on [RSA 674:21](#), it is recommended that the ordinance be amended to reference the new statute.

The ADU law will be found at RSA 674:71 through RSA 674:73.

New Hampshire Office of Energy and Planning  
107 Pleasant Street, Johnson Hall 3<sup>rd</sup> Floor, Concord, NH 03301  
Phone: 603-271-2155 Web: [www.nh.gov/oep](http://www.nh.gov/oep)

## What is the Purpose of the Accessory Dwelling Unit Law?

The reasons cited by the legislature for the ADU law are:

- A growing need for more diverse affordable housing opportunities for New Hampshire citizens;
- The desire of adult children to provide semi-independent living arrangements for aging parents;
- The need for independent living space for caregivers for elderly and disabled citizens;
- The need to increase the supply of affordable housing without the need for more infrastructure or further land development;
- Benefits for aging homeowners, single parents, college graduates with high student debt, caregivers and disabled persons;
- Integrating affordable housing into the community with minimal negative impact; and
- Providing elderly citizens with the opportunity to live in a supportive family environment with both independence and dignity.

## How will Accessory Dwelling Units be Regulated?

A municipality that adopts a zoning ordinance which regulates ADUs must allow one ADU for any single-dwelling unit as a matter of right, or by conditional use permit, or by special exception in all zoning districts that permit single-family dwellings.

- **As a Matter of Right** – When allowed as a matter of right, a property owner is not required to obtain special permission from the municipality other than the normal building permit or zoning compliance permit, if required of all new development.
- **Conditional Use Permit** – Even though ADUs will be removed from the Innovative Land Use Controls statute ([RSA 674:21](#)) effective June 1, 2017, the new ADU statute allows municipalities to utilize the conditional use permit process authorized in [RSA 674:21](#) whereby the planning board reviews an ADU application submitted by the property owner and grants a permit. A municipality that chooses to regulate ADUs in this manner should determine the conditions under which the permit will be issued, devise an application form, determine what information should be submitted by the

“We must always be working to increase safe, affordable housing options so that all people can live independently and engage in their communities, empowering them to contribute to our economic and civic life. By requiring municipalities to allow one attached accessory dwelling unit to single-family homes in zones that allow those homes and establishing other important requirements for local regulation of these units, this bipartisan bill will help increase affordable housing options, helping to meet workforce demands and allowing more of our older citizens to live independently in their communities. I thank members from both parties in both chambers for their efforts on this legislation, and I am proud to sign this important bill to increase safe and affordable housing options into law.”

Governor Maggie Hassan  
March 16, 2016

applicant, and follow the normal procedural requirements for completed applications as detailed in [RSA 676:4](#). Municipalities may also want to review the planning board's Rules of Procedure, if that is where the information is included on how conditional use permits are administered.

- **Special Exception** – Municipalities that choose to regulate ADUs through the special exception process should amend their zoning ordinance to include the criteria required for the grant of a special exception by the zoning board of adjustment (ZBA), as provided in [RSA 674:33, IV](#).

Municipalities have some discretion in determining the conditions under which the planning board would issue a conditional use permit or the ZBA would issue a special exception for an ADU. The provisions to regulate the appearance of the ADU may include:

- Design standards that maintain continuity with the look of the primary dwelling unit;
- Location of parking for and access to the ADU so that they are not visible from the road;
- Owner occupancy of either the primary or accessory dwelling unit;
- Square footage of the ADU (not less than 750 square feet); and
- Limits on the number of unrelated persons, the number of persons per bedroom, and/or the number of bedrooms (cannot be limited to only one bedroom).

### **What if a Current Ordinance Differs from the Provisions of the New Law?**

The provisions in a municipality's existing ADU ordinance that are not in compliance with the requirements of the new ADU law will become ineffective and unenforceable as of June 1, 2017.

### **What if an Ordinance is Silent on Accessory Dwelling Units?**

If a municipality's zoning ordinance contains no provisions related to ADUs, then the minimum provisions of the new law shall apply beginning on June 1, 2017:

- One *internal* or *attached* ADU per single-family dwelling will be deemed a permitted accessory use for all single-family dwellings; and
- ADUs will be permitted as a matter of right, with no permits or conditions required other than a building permit or zoning compliance permit, if necessary.

## What Standards May, Must Be, or Must Not Be in Municipal ADU Regulations?

ADU Standards that <b>Must or May Be</b> in Regulations	ADU Standards that <b>Must Not Be</b> in Regulations
Must apply same regulations for single-family dwellings to the combination of the principal dwelling and the ADU, including, but not limited to lot coverage standards and standards for maximum occupancy per bedroom consistent with U.S. Department of Housing and Urban Development (HUD) policy.	Must not include additional requirements for lot size, frontage, space limitations, or other controls beyond what would be required for a single-family dwelling.  Must not limit an ADU to only one bedroom.
Must have an interior door between the attached ADU and the primary dwelling.	Must not require internal doors to remain unlocked.
Must have adequate provisions for water supply and sewage disposal for the ADU, in accordance with <a href="#">RSA 485-A:38</a> (Approval to Increase Load on a Sewage Disposal System).	Must not require separate water and sewage systems for the principal dwelling and ADU.
May require the property owner to live in either the principal dwelling unit or ADU and/or demonstrate that one of the units is their primary dwelling unit.	Must not say which unit the owner must live in.
May limit the number of unrelated individuals that occupy the ADU or principal dwelling unit.	Must not require a familial relationship between the occupants of an ADU and the occupants of the principal dwelling unit.
May establish minimum and maximum sizes for ADUs.	Must not restrict the size of the ADU to less than 750 square feet.
<p><b>Other Standards That <u>May Be</u> in Regulations:</b></p> <ul style="list-style-type: none"> <li>○ May limit the number of ADUs to only one per single-family dwelling.</li> <li>○ May require adequate parking to accommodate the ADU.</li> <li>○ May establish design or aesthetic continuity standards for ADUs so their appearance fits in with the principal dwelling unit and/or neighborhood.</li> <li>○ May deem an ADU to be a unit of workforce housing for purposes of satisfying municipal obligations under <a href="#">RSA 674:59</a>, if the unit meets the criteria in <a href="#">RSA 674:58, IV</a> for rental units.</li> </ul>	

## What About Detached Accessory Dwelling Units?

Municipalities may enact zoning regulations to permit *detached* ADUs, in addition to the *internal* or *attached* ADUs permitted by the ADU law. Such regulations may require a larger lot size for a principal dwelling unit and a *detached* ADU than for only a principal dwelling unit in the same zoning district. Otherwise, regulations for *detached* ADUs must comply with the same standards stated on the previous page.

## What are the Next Steps?

A municipality's next steps in regards to the new ADU law depend on whether the municipality has already adopted an ADU ordinance and whether the municipality wants to adopt certain standards for ADUs. The guidance below is offered for these various scenarios. In all of the scenarios below, municipalities should also consider whether or not to amend their ordinance to allow *detached* ADUs and the standards to apply to them.

1. If a **municipality has a current ADU ordinance**, officials should complete a review of the ordinance and determine if it complies with the standards of the new law. If changes are needed, the municipality should amend the ordinance before June 1, 2017.

If the regulations rely on [RSA 674:21](#), which the new law repeals, it is recommended that amendments be made to reference the new statute.

If the regulations allow ADUs only on larger lot sizes or with greater frontage or other similar dimensional requirement than required for single-family dwellings in that district without ADUs, they will no longer apply under the new ADU law.

2. If a **municipality does not have a current ADU ordinance** and would like to adopt certain standards for ADUs, municipalities should develop an ordinance that complies with the new law and decide whether to allow ADUs by conditional use permit, or by special exception. If adopting ADU provisions, the municipality should do so before June 1, 2017.
3. If a **municipality does not wish to adopt an ADU ordinance**, the minimum provisions of the new law will still apply in the municipality beginning on June 1, 2017.

