

TOWN OPERATIONS COVID-19 FAQs

*Replaces Town Office Closures COVID-19 FAQs

In response to questions posed by our members about how COVID-19 affects general municipal operations, the Municipal Assistance Center has assembled the following information related to common and forthcoming municipal services such as closing or limiting access to town offices, requiring the use of face masks, dog licensing, access to public records, and processing zoning applications.

*As the State of Vermont transitions from emergency response to “restart” and recovery, we have updated the former “Town Office Closures COVID-19 FAQs” with new information below. This document now includes the previous questions related to closures and updates on new legislation and guidance from the Agency of Commerce and Community Development (ACCD) related to safely reopening town offices.**

For additional information about municipal emergency planning assistance and coordination, please visit our Coronavirus Resources and Recommendations webpage, www.vlct.org/coronavirus.

The Secretary of State’s Office is keeping an updated list of town office closures/limitations. To see the list go to <https://sos.vermont.gov/secretary-s-desk/about-the-office/covid-19-response/> and scroll down to the “Municipal Assistance” heading. Click in the list below to jump to a specific section.

★ Indicates new information.

TOWN BUILDINGS	2
Should we close or limit access to our town office?	2
Who has the authority to close a town building?.....	2
How do we respond to a public records request if the town office is closed?	3
How do we keep functioning if the town buildings are closed?	3
★How do we keep those who staff and access our town buildings safe?	3
★What restrictions are there on reopening our offices?.....	3
★Can we require anyone who enters a town building to wear a mask?	4
★Can we require everyone in town to wear a mask?	4
★How are local measures adopted?	4
★How are local measures enforced?	4
What are best practices for notifying the public of our town office closure?	5
Extending or Waiving License, Permit, Programs, or Plan Deadlines.....	5
Can towns provide an extension for any expiring permits and licenses?	5
DOG LICENSING AND RABIES CLINICS.....	6
The deadline for licensing dogs is April 1. How do we issue licenses during this crisis?.....	6

Can the deadline for licensing dogs be waived or extended beyond April 1? 6

Can we waive the statutory penalties imposed for missing licensing deadlines? 7

Our town holds a free rabies clinic every year. Can we cancel/postpone it? 7

ZONING 7

What happens if we cannot run our zoning department and, therefore, cannot process applications for development review? 7

Can we postpone public hearings required to be held to adopt/amend/repeal town plans and zoning bylaws? 8

Can the appropriate municipal panel cancel or postpone hearings for development review that have been warned? 8

What if the appropriate municipal panel cannot issue hearing decisions in a timely manner? 9

TOWN BUILDINGS

Should we close or limit access to our town office?

Whether a town office or town building will remain open due to public health concerns is a decision for each elected official with their own office, the town manager, selectboard, and local health officer to make in consultation with the local emergency management director and the VT Department of Public Health. Town clerks and other independently elected town officers generally set their own office hours and can choose to completely cease or limit their operations until further notice. In MAC’s opinion, since the town manager or selectboard has control over town buildings, they may decide to close them, regardless of what other independently elected officials decide. To date, the Governor has made no statewide declaration closing town office buildings. However, Governor Scott’s Addendum 6 to the Stay Home/Stay Safe order (Executive Order 01-20) on March 24, 2020 provides additional guidance for government functions that can continue in person. See our “What are Essential Local Government Services and Functions?” resources at <https://www.vlct.org/coronavirus#FAQs> for more information.

Who has the authority to close a town building?

Under the town manager form of government, the town manager has “charge and supervision of all public town buildings . . . unless otherwise provided for by the selectboard.” 24 V.S.A. § 1236(4). Therefore, the town manager may make this decision unless the selectboard has made other arrangements. The selectboard or local public health officer may also issue a health order or emergency health order, respectively, to close a

town building in order to prevent, remove, or destroy any public health hazard or to mitigate a significant public health risk. 18 V.S.A. §§ 126(a), 127(a).

How do we respond to a public records request if the town office is closed?

The Public Records Act (“PRA”) requires that the custodian of a public record must “promptly” produce a record for copying or inspection. “Promptly” is defined by the PRA to mean “immediately, with little or no delay, and, unless otherwise provided . . . not more than three business days from receipt of a request . . .” 1 V.S.A. § 318(a)(1). “Business day” means a day that a public agency is open and providing services. If a town office (e.g. clerk’s office) is closed to the public, we do not think the town clerk would be violating the PRA by not replying within this timeframe since no business days are expiring. However, this is not very responsive to the needs of the public. This approach may also not be practically feasible unless and until there is a federal or state declaration completely shutting down all government buildings.

How do we keep functioning if the town buildings are closed?

Just because a town building is closed or limited to the public doesn’t mean that it is inaccessible to all town officers and employees who assist them. If, for example, the town clerk’s office is closed, there are still ways to accomplish critical business. Here are some suggestions:

- Allow office or vault access by appointment only to minimize crowding and provide the opportunity to practice social distancing;
- Make records available online, if possible; or
- Receive requests by phone or email, research and retrieve the documents requested and then email electronic copies or mail hard copies, for a fee.



How do we keep those who staff and access our town buildings safe?

VLCT has no health protocol recommendations, other than following the CDC and Vermont Department of Health's recommendations on social distancing, sanitizing, handwashing, etc.

Please see our webpage that has links to all these resources: <https://www.vlct.org/coronavirus>



What restrictions are there on reopening our offices?

Restrictions on town office operations may be imposed by the State and the selectboard. Town offices can only be reopened and operated in compliance with the State’s “Work Safe” guidance as authorized by the Governor’s executive order. This guidance is provided by the VT Agency of Commerce and Community Development (ACCD) and has been changing on a weekly basis. For the most up to date guidance please visit, <https://accd.vermont.gov/news/update-new-work-safe-additions-be-smart-stay-safe-order>. While

the State has authorized town offices to reopen and operate, this does not mean that towns must do so. The final decision as to whether to open town offices, and under what circumstances, continues to rest with the selectboard or town manager. The conditions to and limitations on reopening a town office may be more restrictive than what the State allows, and the public should be notified of them through broad outreach and signage.



Can we require anyone who enters a town building to wear a mask?

Yes. Although all Vermonters are encouraged to wear face coverings over their nose and mouth any time they are interacting with others from outside their households, they are not required to do so. Addendum 14 to the Governor’s Executive Order 01-20, however, explicitly permits businesses, non-profit, and government entities (e.g. towns, cities, villages, etc.) to require their customers or clients to wear masks.



Can we require everyone in town to wear a mask?

Yes. Addendum 14 to the order allows selectboards to adopt more restrictive mask wearing measures in their towns than those prescribed by the Governor’s order. Any local measure would be defined by the selectboard and could apply to any public or private place within the town’s boundaries that are accessible to the public. Stricter local measures could include requiring people to wear masks in all retail establishments or public places. We recommend that selectboards consult with their town attorneys prior to instituting any restrictions.



How are local measures adopted?

State law authorizes selectboards to adopt, amend, and rescind such rules, orders, and regulations as may be necessary for emergency management purposes so long as they are consistent with those of the Governor or any state agency. 20 V.S.A. § 16. The requirements can be adopted as resolutions (orders) or ordinances (rules) and both must be adopted by majority vote of the selectboard at a duly noticed public meeting. Note that adopting an ordinance also requires close adherence to the statutorily prescribed procedures in 24 V.S.A. §§ 1972 et seq.



How are local measures enforced?

If your town adopts a stricter local measure for face masks than the Governor's Orders, your town’s first and primary method of enforcement should be educating the public of the order’s or ordinance’s requirements and requesting voluntary compliance. If necessary, enforcement of an order could likely be pursued via 20 V.S.A. § 24, which states, “[a]ny person violating any provision of [the emergency management chapter] or any rule, order or regulation made pursuant to [the emergency management chapter] which rule, order or regulation shall be filed with the secretary of state, shall, upon conviction thereof, be punishable by a fine not exceeding \$500.00 or imprisonment not exceeding six months or both.” On the other

hand, adopting an ordinance as opposed to an order will enable your selectboard to individually craft penalties within the statutory limits that would apply to any violation. A municipal ordinance is designated either as a civil or criminal offense and may carry a fine or penalty of up to \$800. A civil ordinance is typically enforced in the Vermont Judicial Bureau, the court with statewide jurisdiction over civil violations.

What are best practices for notifying the public of our town office closure?

A review of town office closure notifications from around the state reveals some best practices when it comes to informing the general public. These best practices include clearly communicating:

- Whether the town offices are being completely closed or if access will be limited by, for example, appointments only;
- When the temporary closure will take effect and how long it will be expected to last;
- Why the temporary closure is being instituted (to protect the public health by curbing the spread of COVID-19);
- Staff hours and best methods to communicate with staff;
- Which services the town will continue to provide and how those services will be provided (if only essential services will be provided, defining them in detail);
- Whether public bodies will continue to meet and their schedules;
- Postponement or cancellation of any town sponsored events/services;
- Emergency contact information;
- A listing of important local, state, and federal resources:
 - www.healthvermont.gov
 - Center for Disease Control www.cdc.gov
 - COVID-19 resources and information in Vermont: Dial 2-1-1
- Where to find additional information and future notifications from the town (e.g. town Facebook, Front Porch Forum, or webpage);
- A hopeful word and an appreciation for the public's patience and understanding; and
- Name, title, and contact information of those responsible for the notification.

Samples of town office closure notification can be found on Vermont's Municipal LISTSERV, MuniNet at: <https://list.uvm.edu/cgi-bin/wa?A0=muninet>.

EXTENDING OR WAIVING LICENSE, PERMIT, PROGRAMS, OR PLAN DEADLINES

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

Yes. In summary, Section 8(b) of Act 92 states that: 1) towns can extend any deadline that applies to the town itself; 2) towns can extend any license, permit, program, or plan it issues; and 3) any license, permit, program,

or plan that expires during the state of emergency remains valid for 90 days after the emergency. 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. 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 during the declared state of emergency. If the legislative body does not affirmatively extend or waive a deadline, then 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 Act 92 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, and dog licenses as it is to zoning permits. However, it does not apply to liquor licenses which are technically issued by the State, as the Act's extension provisions don't apply to deadlines related to any State licenses, permits, programs, or plans. To extend municipal deadlines related to State licenses, permits, programs, or plans, municipalities should reach out to applicable State agencies and the Governor's Office. The Act allows the Governor to authorize State agencies to extend these state related deadlines for up to 90 days after the date the declared emergency ends.

DOG LICENSING AND RABIES CLINICS

The deadline for licensing dogs is April 1. How do we issue licenses during this crisis?

Towns that are closing their offices, limiting their hours of operation, or changing the method by which people are licensing their dogs (e.g. mail only, drop box, etc.), will need to quickly communicate that information to their residents. Many towns are asking their residents to mail in rabies vaccination certificates accompanied by the requisite licensing fee paid by check addressed to the town office by April 1 and mailing the certificates and tags to the addresses provided. Any license applications or renewals received by the April 1 deadline should be considered timely even if they're processed at a later date.

Can the deadline for licensing dogs be waived or extended beyond April 1?

Yes. Section 8(b) of Act 92 (see above) allows towns to "extend or waive deadlines applicable to licenses, permits, programs, or plans issued by a municipal corporation." Additionally, during the state of emergency, "Any expiring license, permit, program, or plan issued by a municipal corporation that is due to the municipal corporation for renewal or review shall remain valid for 90 days after the date that the declared state of emergency ends." 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 the deadline for dog licenses.

Can we waive the statutory penalties imposed for missing licensing deadlines?

Yes. Although the penalties for failing to license dogs on time is imposed by State law, the funds are retained by the town and, consequently, may be waived by the selectboard. If the selectboard intends to waive licensing penalties, it should include a clear expiration date of such waiver which can be extended, if necessary.

Our town holds a free rabies clinic every year. Can we cancel/postpone it?

Yes. There is no legal requirement that towns hold a rabies clinic. Historically, clinics have been held by towns and veterinarians who volunteer their time as a public health service to help reduce the spread of canine rabies. We have been informed that some veterinarians are declining to keep appointments of all types, including the administration of routine vaccinations, until the spread of COVID-19 mitigates. This will have the unfortunate, unintended consequence that many owners will lack the requisite vaccination certificate to license their dogs.

ZONING

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). 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 closes 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 Act 92 (see above) allows the zoning administrator to extend the (30 days) deadline to act on a complete application.

MAC’s opinion is that if the town office is closed, then applications cannot be received and processed by the zoning administrator in order 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. Env’tl. 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 and process applications and even act on them, remotely if need be, if at all 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. Section 8 of Act 92 explicitly allows towns to extend these deadlines indefinitely during the declared state of emergency. Specifically, the temporary law states, “(d)uring a declared state of emergency under 20 V.S.A. chapter 1 due to COVID-19, a municipal corporation shall be permitted to extend any deadline applicable to municipal corporations, provided that the deadline does not relate to a State license, permit, program, or plan subject to subsection (a) of this section.” 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. We do not recommend holding a public hearing during the public health emergency amid the stay-at-home order’s restrictions on public gatherings. Instead, we recommend that the legislative body, at a duly warned meeting, 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 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 the appropriate municipal panel cancel or postpone hearings for development review that have been warned?

Yes. The appropriate municipal panel has the authority to control its meeting schedule and postpone any hearings until the threat of the coronavirus passes. Once an application has been referred to it by the zoning administrator, the appropriate municipal panel can hold off warning the hearing unless your 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 health. When the threat passes and the 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 (or extend under Section 8(b) of Act 92) 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. Please see “Open Meeting Law and COVID-19 Response FAQs” regarding conducting electronic meetings at: <https://www.vlct.org/resource/open-meeting-law-and-covid-19-response-faqs>.

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

Similarly, as with 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 extend under Section 8(b) of Act 92) all hearings until the threat of coronavirus has passed.

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.