

State Planning and Zoning Laws in New England



The following matrix of select planning and zoning related state laws from the six New England states is designed to help New England citizen planners consider the range of land use controls that are available to them. All states delegate considerable authority

over land use to cities and towns, but no two do it in quite the same way, and there is a wide range of restrictions that states impose. Sometimes there is debate among land use law experts about whether a given zoning technique is permissible under a state's laws (in Massachusetts, for example, this debate sometimes turns on the question

of whether a town retains certain powers not curtailed by the state under its "home rule" authority). Court decisions sometimes establish state law, and several are cited in the matrix. Please remember that state law is always subject to change, and that you should confirm that a given legal rule remains in effect.

	Connecticut	Maine	Massachusetts	New Hampshire	Rhode Island	Vermont
Does the state mandate local comprehensive plans?	Yes. Towns update plans every ten years. (Conn. Gen. Stat. Ann. § 8-2 (1999); Conn. Gen. Stat. Ann. § 8-23 (1999)).	Yes, where towns wish to enact zoning. (Me. Rev. Stat. Ann. tit. 30-A, § 4321-26). Shoreland zoning is mandatory, however, and no comprehensive plan is needed to support it. (Me. Rev. Stat. Ann. tit. 38, § 435.)	All towns over 10,000 people are to establish planning boards and create master plans. (Mass. Gen. Laws Ann. ch. 41, § 81D).	Yes, where towns wish to enact zoning. (N.H. Rev. Stat. Ann. § 674:1).	Yes. (R.I. Gen. Laws § 45-22.2-5).	Yes, where towns wish to have zoning or subdivision regulations, an official map, impact fees or capital improvement programs. (Vt. Stat. Ann. tit. 24, §§ 4382, 4401).
Must town regulations be consistent with the local comprehensive plan?	Yes. (Conn. Gen. Stat. Ann. § 8-2 (1999)).	Yes, except as noted above with respect to shoreland zoning. (Me. Rev. Stat. Ann. tit. 30-A, §§ 4352 (2)).	No. If a master plan is adopted, it must specify the process for amending town regulations consistent with the master plan. (Mass. Gen. Laws Ann. ch. 41, § 81D (9)).	Yes. (N.H. Rev. Stat. Ann. § 674:18).	Yes. (R.I. Gen. Laws § 45-24-34 (zoning); R.I. Gen. Laws § 45-23-31 (subdivision regulations); R.I. Gen. Laws § 45-22.2-6 (comprehensive planning)).	Yes. (Vt. Stat. Ann. tit. 24 § 4401). In addition, legislation was passed recently requiring that zoning or subdivision regulations can only be considered under Act 250 (Criterion 10, Conformance with local or regional plans) if they implement and are consistent with applicable provisions in the plan. (Vt. Stat. Ann. tit. 10, § 6086(a)(10)).
Is there a certification process to ensure local plans are consistent with state or regional plans or policies?	No.	If a town accepts a state planning grant, it is required to have its comprehensive plan certified by the State Planning Office. Such certification is valid for five years. (Me. Rev. Stat. Ann. tit. 30-A, §§ 4327, 4347).	No.	No.	Yes. The Office of State Planning certifies plans that are consistent with the State Guide Plan and the Comprehensive Planning and Land Use Regulation Act. (R.I. Gen. Laws § 45-22.2-9). Towns must update plans at least every five years, and may not amend plans more than four times in a year. (R.I. Gen. Laws § 45-22.2-12).	Yes. At the request of the towns, regional planning commissions approve local plans for conformance with state goals, the regional plan, and the plans of other municipalities in the region. Towns must have this approval in order to receive state planning grants and levy impact fees. Regional planning commissions also confirm at least twice in five years that the municipality is involved in a continuing planning process that will result in a plan that is consistent with state goals. Towns must update plans at least every five years. (Vt. Stat. Ann. tit. 24, §§ 4350, 4397[a]).

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What is the role of regional planning organizations?	Regional planning agencies prepare regional plans. (Conn. Gen. Stat. Ann. § 8-35a). They must be notified of zoning changes within 500 ft. of another town. (Conn. Gen. Stat. Ann. § 8-36.)	Maine law provides for the establishment of regional planning bodies that provide shared services and are in a position to provide regional solutions to transportation, economic development, and other issues.	Regional planning agencies prepare plans and provide technical assistance. The Cape Cod and Martha's Vineyard Commissions have additional powers.	Regional Planning Commissions, created under RSA 36:45 et seq., advise member towns and may undertake projects to assist them, such as preparing master plans. RPCs also review and advise on developments of regional impact.	Rhode Island has no regional planning organizations, but joint commissions are allowed. (R.I. Gen. Laws § 45-22.1).	Regional planning commissions create plans consistent with listed goals (Vt. Stat. Ann. tit. 24, §§ 4348, 4348a & 4302), and provide technical assistance to towns engaged in planning (Vt. Stat. Ann. tit. 24, § 4345a). Regional planning commissions may, in the regional plan, identify locations for "developments of potential regional impact". Vt. Stat. Ann. tit. 24, § 4348a(2)(B). Projects reviewed under Act 250 must conform to regional plans.
Are there incentives or penalties to promote the creation of local plans?	No.	Yes. Towns with certified plans may use zoning, contract zoning (Me. Rev. Stat. Ann. tit. 30-A, § 4352), and impact fees (Me. Rev. Stat. Ann. tit. 30-A, § 4354). In addition, such towns are given preference for state funding for community development block grants, and for acquisition of land for conservation or recreational facilities. (Me. Rev. Stat. Ann. tit. 30-A, § 4349). In towns with certified plans, zoning guides state agency policies and programs. (Me. Rev. Stat. Ann. tit. 30-A, § 4352).	No.	Yes. Master plan required for creation of capital improvements program. (N.H. Rev. Stat. Ann. § 674:5-8). Master plan and capital improvement program are both required for adoption of growth management mechanisms. (N.H. Rev. Stat. Ann. § 674:22).	Yes. State agency programs and projects must conform to local plans, or project must promote health, safety and welfare, conform with the State Guide Plan and vary as little as possible from the local plan. (R.I. Gen. Laws § 45-22.2-10). Municipalities not complying with the state planning requirements will have a plan prepared for them by the Office of State Planning. (R.I. Gen. Laws § 45-22.2-13).	Yes. Towns with approved plans may levy impact fees and are eligible to receive funds from the municipal and regional planning fund. All state agency financial decisions and plans must conform to local plans approved by the regional planning commission. (Vt. Stat. Ann. tit. 24, § 4350).
Is Planned Unit Development (PUD) allowed?	Yes. (Conn. Gen. Stat. Ann. § 8-2d (1999)).	As a matter of practice, many towns create PUD regulations, either as part of their zoning or subdivision regulations.	Yes, by special permit. (Mass. Gen. Laws Ann. ch. 40A, §9).	Yes. (N.H. Rev. Stat. Ann. § 674:21 (2000)).	Yes. (R.I. Gen. Laws § 45-24-47).	Yes. (Vt. Stat. Ann. tit. 24, § 4407(3)&(12)).

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Is the transfer of development rights (TDR) allowed?	Yes. (Conn. Gen. Stat. Ann. §§ 8-2e, 8-2f (1999)).	Probably, pursuant to municipalities' home rule authority.	State law does not prohibit its use.	Yes. (N.H. Rev. Stat. Ann. § 674:21 (2000)).	Yes. (R.I. Gen. Laws § 45-24-33(b)(2)).	Yes. TDR programs must meet state standards. (Vt. Stat. Ann. tit. 24, § 4407(16)).
Are temporary building moratoria allowed?	Yes. (Conn. Gen. Stat. Ann. § 8-2). 9 month moratorium on business development upheld while town considered a zoning change. <i>Arnold Bernhard & Co. v. Planning and Zoning Comm'n of Westport</i> , 194 Conn. 152 (1984).	Yes, but not more than 180 days, and only to prevent a shortage or an overburdening of public facilities, or where existing regulations are inadequate to prevent serious public harm. (Me. Rev. Stat. Ann. tit. 30-A, § 4356).	Yes. 18-24 month moratorium allowed for municipality to complete a comprehensive plan or assure that it can provide adequate public facilities. See <i>Giuliano v Edgartown</i> , 531 F. Supp. 1076 (D. Mass. 1982). See also <i>Collura v. Arlington</i> , 367 Mass. 881 (1975) (upholding a two-year apartment construction moratorium).	Yes, for up to one year in unusual circumstances. (N.H. Rev. Stat. Ann. § 674:23 (2000)).	Yes, if part of the comprehensive planning process and temporary. See <i>Q.C. Construction Co. v. Gallo</i> , 649 F. Supp. 1331 (D.R.I. 1986).	Towns may pass interim bylaws for up to two years, with a possible extension for one additional year. While these do not represent complete moratoria on all building, they may be quite restrictive. Towns must be conducting studies, creating zoning or comprehensive plans, in order to use interim bylaws. (Vt. Stat. Ann. tit. 24, § 4410).
Is the use of incentive zoning allowed?	Yes. Developers of multi-family affordable housing units may receive a density bonus. To receive bonus, developer must construct one unit of affordable housing for each market rate unit proposed. (Conn. Gen. Stat. Ann. §8-2g (1999)).	Yes. Reduction of minimum lot sizes are allowed to encourage affordable housing development. (Me. Rev. Stat. Ann. tit. 30-A, § 4326(3)(G)).	Yes, by special permit. (Mass. Gen. Laws Ann. ch. 40A, § 9).	Yes. (N.H. Rev. Stat. Ann. § 674:21(2000)).	Yes. Allowed in exchange for provision of open space, affordable housing, traffic and pedestrian improvement, and any other amenities consistent with local plan. Payment in lieu of improvements is also allowed. (R.I. Gen. Laws § 45-24-33(B)(1)).	Yes. Specifically allowed in planned residential developments (Vt. Stat. Ann. tit. 24, § 4407(3)), and in planned unit developments for affordable housing. (Vt. Stat. Ann. tit. 24, § 4407(12)(A)).
Is single use zoning for agriculture, forest or recreational uses allowed?	Yes. See <i>Central Bank for Savings v. Zoning Comm'n of the town of Cromwell</i> , 13 Conn. App. 448 (1988).	Probably. State law does not prohibit, and includes a broad provision for protecting rural areas. (Me. Rev. Stat. Ann. tit. 30-A, § 4326(3)(a)).	No.	Yes. (N.H. Rev. Stat. Ann. § 674:21 (2000)).	Yes, if consistent with local comprehensive plan.	Yes. Agricultural, forest and recreation districts are allowed. Agricultural districts may prohibit all other land development except residential lots of not less than 25 acres each. Forest districts may prohibit all other land development. Recreation districts may prohibit year round housing and commercial development. (Vt. Stat. Ann. tit. 24, §4407(1)).

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Is large lot zoning allowed to protect agriculture or forestry?	Maybe.	Yes. See the Single Use Zoning section above.	No. The state supreme court has upheld 3-acre zoning on Martha's Vineyard to protect a pond's ecology. <i>Johnson v. Edgartown</i> , 425 Mass. 117 (1997).	Yes. 50-acre forest zoning upheld in <i>Caspersen v. Town of Lyme</i> , 661 A.2d 759 (N.H. 1972).	Yes, if consistent with a town's comprehensive plan.	Yes. (Vt. Stat. Ann. tit. 24, §4407(1)).
Is inclusionary zoning allowed?	Yes. (Conn. Gen. Stat. Ann. § 8-2i (1999)).	Yes. (Me. Rev. Stat. Ann. tit. 30-A, § 4752).	Yes. (Mass. Gen. Laws Ann. ch. 40A, § 9).	Yes. (N.H. Rev. Stat. Ann. § 674:21 (2000)).	Yes.	Yes. Vt. Stat. Ann. tit. 24, § 4407(3)(B).
Are impact fees allowed?	Limited. May be used in conjunction with inclusionary zoning. Payments may be made into a trust fund to be used for affordable housing. (Conn. Gen. Stat. Ann. § 8-2i(1999)).	Yes. Fees for off-site capital improvements of waste water treatment plants, water and solid waste facilities, for roads and traffic, parks and open space, and school facilities (among others) are allowed for towns with certified comprehensive plans. (Me. Rev. Stat. Ann. tit. 30-A, § 4354).	No. However, developers can be required to provide open space, low-income housing, traffic improvements, etc., in exchange for special permit approval for density or use intensity increases (Mass. Gen. Laws Ann. ch. 40A, § 9). Impact fees are explicitly allowed in Barnstable County towns with adopted comprehensive plans under the Cape Cod Commission Act. (c.716, Acts of 1989).	Yes. Provided the town has adopted a capital improvement program. Such fees can be used to fund capital improvements for water and wastewater treatment facilities, sanitary sewers, flood control, public roads, public schools and public safety facilities. Although impact fees may be used for recreational facilities, they may not be used for open space acquisition. (N.H. Rev. Stat. Ann. § 674:21(m) (1999)).	Yes. Impact fees can be imposed on any new development for its "proportionate share" of the "public facility's capital improvement", and can be used to improve roads, bridges, flood control, open space, schools, etc. The Development Impact Fee Act of 2000. (R.I. Gen. Laws § 45-22.4)	Yes. Impact fees may be imposed by any town with a confirmed comprehensive plan. They may be used to assist with the costs of any capital project "that will benefit or is attributable to the uses of the development", but only after the town has adopted a capital budget and program which includes a formula to assess the impact fee on property. (Vt. Stat. Ann. tit. 24, § 5200).
If a town moves to rezone a district, under what circumstances can an owner "freeze" the existing zoning?	By filing an application to build prior to the effective date of the zoning change. (Conn. Gen. Stat. Ann. §§ 8-2h, 8-26). Construction must be completed within 5 years of approval (with an extension up to 5 years allowed). (Conn. Gen. Stat. Ann. §§ 8-3, 8-26c).	An applicant may proceed with construction notwithstanding a change in zoning, if the applicant has made a substantial good-faith change in reliance on the zoning law in effect at the time of the application. Preliminary expenditures for surveys and architect's plans do not establish such vested rights. <i>Thomas v. Zoning Bd. of Appeals of City of Bangor</i> , 381 A.2d 643 (Me. 1978).	For subdivisions, by filing a preliminary subdivision plan (followed by a definitive plan within 7 months) prior to the effective date of the new zoning. This protection lasts for 8 years. For other development, by having a building or special permit in hand prior to the first publication of notice of a public hearing on said change. Construction must commence within 6 months after the issuance of the permit. (Mass. Gen. Laws Ann. ch. 40A, § 6).	Unless an owner has filed a complete application prior to the first publication of the notice to rezone, no building permits may issue under the existing zoning. (N.H. Rev. Stat. Ann. § 676:12 (2000)).	By filing a substantially complete application to build prior to the effective date of the zoning change. Towns determine what constitutes substantially complete and set reasonable time limits for construction commencement and completion. (R.I. Gen. Laws § 45-24-44).	Once notice of the select board hearing on the zoning change is made, no building permits may issue under existing zoning, provided the town adopts the proposed amendment within 150 days after the notice date.

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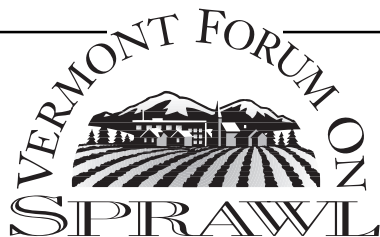
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