

Town Office Closure FAQs Related to COVID-19

VLCT Municipal Assistance Center

In response to questions posed by our members about town office closures due to COVID-19 and their legal and practical effects on general municipal operations, the Municipal Assistance Center has assembled the following information related to common and forthcoming municipal services such as dog licensing, access to public records, and processing zoning applications.

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/> scroll down to the "Municipal Assistance" heading.

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.

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 provided by the VT Secretary of State’s office:

- 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.

Source: “COVID-19 Impacts and Considerations for Open Meeting Law, Elections and Public Records Access” available at: <https://sos.vermont.gov/secretary-s-desk/commentary/covid-19-impacts-and-considerations-for-open-meeting-law-elections-and-public-records-access/>

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

VLCT has no health protocol recommendations. We suggest 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 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>.

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?

No. State law requires every owner of a dog or wolf-hybrid more than six-months old to license it by April 1 of every year. 20 V.S.A. § 3581(a). This deadline is set in statute and towns have no authority to extend or waive this, or any other licensing deadline; such a change would generally require action by the Vermont Legislature. To date, no changes have been made.

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.

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 the appropriate municipal panel cancel or postpone hearings 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 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 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.