Changes to Land Use Statutes:
A Guide for Municipalities

NEW HAMPSHIRE MUNICIPAL ASSOCIATION

An Advisory of the New Hampshire Municipal Association
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Summary of Changes Pursuant to 2026 Chapter Law 210 (HB 1079), 2026 Chapter Law 217 (HB 1195). 2026 Chapter Law 292 (HB 1141), and 2026 Chapter Law 33 (HB 1246)

Amendments to RSA 674:72, Accessory Dwelling Units:

2026 Chapter Law 210 (HB 1079) amends RSA 674:71-72 to update multiple aspects of the existing Accessory Dwelling Unit requirements. The most significant update is a new provision relative to the vesting of building approvals for pre-existing structures to be converted into Accessory Dwelling Units (ADUs).

Any legal pre-existing structure that is approved to be converted into an ADU and built after July 1, 2025, will be vested and receive an exemption from any subsequent changes to zoning ordinances. This vesting period lasts from 3 to 7 years, in accordance with the provisions of RSA 674:39, including the structure "meet[ing] the time period for reaching active and substantial development and completion." This means when a legal pre-existing structure is approved to be converted into an ADU, the ADU will be vested if active and substantial development (which requires active construction) occurs within 3 years after approval, unless extended by the planning board, even if the building permit expires. The ADU must also be completed within 7 years of approval, and the completion date cannot be extended by the planning board. Again, the building permit may expire, and the property owner must renew it, if required, but the renewal must be granted even if it would no longer be allowed under then-current requirements.

To determine if a legal pre-existing structure has undergone "substantial development and completion" when being converted into an ADU, local officials will need to utilize the criteria established under RSA 674:39, the Seven-Year Exemption for approved subdivision plats. These conditions should be considered on a case-by-case basis depending on the proposal and in accordance with RSA 674:39.

Additionally, any legal pre-existing structures built before July 1, 2025, that violate the current and existing zoning ordinances for setbacks and/or lot coverage, shall be permitted to be converted into an ADU by right. This exemption only applies to legal pre-existing structures that violate zoning ordinances for setbacks and/or lot coverage.

Municipalities are permitted to determine eligibility for the placement of an ADU within a legal pre-existing structure if the structure does not comply with current dimensional requirements for setbacks and lot coverage. Municipalities can require the applicant to prove that a structure is a legal pre-existing, non-conforming structure exempt from the current and existing setbacks and/or lot coverage requirements, in accordance with existing law or local ordinance(s), or require the applicant to show proof of a previously received exemption from the currently applicable set back or lot coverage requirements. A previously received exemption would likely be, but not necessarily be limited to, a variance.

Finally, the new provisions state that conversion of a legally pre-existing nonconforming structure to an ADU shall not constitute a "change of use" under either RSA 674:19 or any zoning ordinance (regardless of how "change of use" is defined in the ordinance) for purposes of maintaining its pre-existing status.

2026 Chapter Law 210 (HB 1079) also amends the definitions for an "attached unit" and "detached unit" ADU to reflect the definitions for those terms prior to 2025's HB 577 becoming effective. The definition for an "attached unit" no longer includes the term "physically connected" to the principal dwelling unit and replaces the term with the word "attached." The word attached has long been interpreted to imply the ADU and principal dwelling unit to share a wall. "Physically attached" is a term that could be misconstrued to imply simple architectural structures, such as breezeways, would allow a detached ADU to be considered attached.

The term "nor completely contained within a preexisting structure" was removed from both the "attached unit" and "detached unit" definitions. While changing these definitions does not impact the requirements established in RSA 674:72, it does create clarity and a clearer distinction between attached and detached ADUs.

Effective Date: August 31, 2026
Statutes Amended: RSA 674:71, II-III, and RSA 674:72, XI by inserting new subparagraphs (a)-(c).

Amendments to RSA 674:16 & Adoption of RSA 674:81, Child Care Centers:

2026 Chapter Law 217 (HB 1195) amends RSA 674:16 and establishes a new RSA 674:81. The amended and new laws require municipalities to allow for child care agencies in their ordinances and regulations, in some cases requiring them to be permitted by right. Municipalities will also be prohibited from adopting or enforcing zoning ordinances contrary to the requirements of RSA 170-E and rules adopted pursuant to that chapter, including the He-C 4002, New Hampshire Child Care Licensing Rules.

Family day care and group family day care: The amended RSA 674:16 now requires municipalities to permit home-based child care, as defined in RSA 170-E:2, IV(a)-(b), by right as an accessory use on lots where residential uses are permitted, if the program meets the requirements of the rules adopted by the department of health and human services, specifically He-C 4002. Previously, municipalities could permit these uses by right or pursuant to a conditional use permit; going forward, a conditional use permit can no longer be required.

Additionally, municipalities may not adopt or enforce any ordinance that is contrary to the requirements of RSA 170-E (Child Day Care Licensing) or rules adopted thereunder, again, specifically He-C 4002.

On lots where residential uses are permitted, home-based child care must be allowed by right in the primary or an existing accessory structure and cannot be made subject to local site plan review. However, municipalities are not required to permit home-based child care in <u>both</u> the primary and an existing accessory structure.

<u>Child care centers on commercially-zoned land</u>: The new RSA 674:81 also requires municipalities to permit child care centers licensed by the department of health and human services by right in zones that permit commercial uses so long as the requirements of RSA 170-E or any rules adopted pursuant to RSA 170-E are met. For this purpose, “child care centers” are defined as any of the following:

(1) Group child day care center, as defined in RSA170-E:2,IV(c);
(2) Infant and toddler program, as defined in RSA170-E:2,IV(d);
(3) Night care program, as defined in RSA170-E:2,IV(e);
(4) Preschool program, as defined in RSA170-E:2,IV(f);
(5) School-age program, as defined in RSA170-E:2,IV(g);
(6) Small group child day care center, as defined in RSA170-E:2,IV(i); or
(7) Any combination thereof in accordance with the requirements for such programs adopted in rules of DHHS.

However, these new requirements do not extend to a “family day care home” as defined in RSA 170-E:2, IV(a) or a “family group day care home” as defined in RSA 170-E:2, IV(b). These specific child care uses are explicitly excluded from the expanded requirements for allowing child care uses.

Municipalities must allow child care centers where industrial and manufacturing uses are permitted, as long as the child care center is for the “exclusive use of employees” of a business located in the zoning district permitting industrial or manufacturing uses. Municipalities are prohibited from adopting or enforcing any ordinance that is different from the requirements of RSA 170-E or rules adopted thereunder for child day care centers in zones permitting commercial, industrial, or manufacturing uses.

Municipalities are also now required to allow an existing building or a portion of an existing building to be converted into a child care center, provided the exterior dimensions of the building do not change.

Municipalities are prohibited from requiring a child care center from being subject to site plan review regulations adopted under RSA 674:44 if the licensed capacity of the child care center is 30 children or fewer.

A licensed home-based or commercial child day care still needs to receive local approvals in accordance with state and local requirements pertaining to health, safety and zoning, as applicable (RSA 170-E:6). The Child Care Licensing Unit rule He-C 4002.02(e)(4) requires child day care agencies applying for a new license to provide documentation from the applicable town or city that the program has been granted zoning approval or that no zoning approval is required, in accordance with RSA 170-E:6.

All licensed child care programs can be found on the Child Care Search website. If a child day care agency is operating and not otherwise exempt under RSA 170-E:3, notify the Child Care Licensing Unit, in addition to taking any appropriate local enforcement actions. If the licensed capacity of the child care center exceeds 30 children, it may be subject to local site plan review regulations depending on the local ordinance and regulations.

What should municipalities do?

Because these new provisions supersede local ordinances, municipalities should review their ordinances to see whether they need to be amended to reflect the limitations in the law.

In addition, municipalities will need to track state rule changes, compare their zoning ordinances to the He-C 4002 rules and other applicable state rules, and document when state rules contradict their local zoning ordinances to ensure compliance. Municipalities should contact the New Hampshire Department of Health and Human Services Child Care Licensing Unit for further guidance on He-C 4002 rules (CCLUoffice@dhhs.nh.gov and (603) 271-9025).

Effective Date: July 1, 2026
Statutes Amended: RSA 674:16, VI
Statutes Adopted: RSA 674:81

Amendments to RSA 485-A and deletion of RSA 12-E, permitting and fee authority for mining and prospecting:

2026 Chapter Law 292 (HB 1141) amends RSA 485-A and deletes RSA 12-E, shifting the state permitting and fee authority for mines and prospecting from the Department of Natural and Cultural Resources (DNRC) to the Department of Environmental Services (DES). This will streamline the state permitting process for new proposals, renewals, and expansions of mining operations.

RSA 12-E was established in 1979 to provide a uniform process for the state to review and approve proposed mining activities in existence after August 24, 1979. These mining activities require a valid permit from the commissioner of the DNRC and are subject to local ordinances that are more stringent than state law (RSA 12-E:4, IV). Additionally, RSA 12-E explicitly states, "The applicant shall comply with local zoning ordinances and shall be required to obtain site plan approval under RSA 674:43 if the municipality has given the planning board site plan review authority." RSA 12-E will be fully repealed July 10, 2028.

Under the expanded RSA 485-A, approvals and permitting for mining operations will be overseen by DES and subject to the same requirements as proposed terrain alterations under RSA 485-A:17. Mining uses will still be subject to applicable local ordinances, including zoning and site plan review. The privately owned uses regulated under RSA 485-A are subject to local ordinances adopted pursuant to RSA 674. It is unclear whether proposed mining uses will require local approvals prior to obtaining state approvals, as is currently required under RSA 12-E:4, III, although obtaining local approvals first will save the applicant time and resources.

The excavation of earth pursuant to RSA 155-E will not be impacted by the legislative changes to RSA 485-A and deletion of RSA 12-E. Excavation sites are not considered mining operations unless the site begins extracting quarry stones or minerals, or if a company or professional agent is "prospect[ing]," as defined in RSA 485-A:2-a, IX-d. Excavation sites may continue to be permitted in accordance with local zoning ordinances or as a special exception "as provided in RSA 674:33, IV, in any non-residential areas of the municipality," and also pursuant to the requirements of RSA 155-E:4. If there is a proposed change of use, changing an existing excavation site to a mining operation, it shall be subject to all applicable local zoning ordinances and site plan review regulations.

Effective Date: July 10, 2026
Statutes Amended: RSA 485-A, RSA 227-C:8-a, II, RSA 21-O:12, II, RSA 155-E:2-a, I(c)
Statutes Deleted: RSA 12-E (on July 10, 2028)

Amendment to RSA 673:7, requiring a planning board member to recuse themselves in certain circumstances:

2026 Chapter Law 33 (HB 1246) amends RSA 673:7, I. Land use projects frequently require applications to both the Planning Board (subdivision, site plan, conditional use permit) and the Zoning Board of Adjustment (ZBA) (variance or special exception). Questions of conflicts of interest arise when one person serves on both boards and the same project will come before both of them. The member may have formed an opinion about the project while judging it on the first board and then be unable to be impartial when it comes to the second board.

This amendment provides that a planning board member who also serves on the ZBA must recuse themselves from any planning board matter that was previously decided by the ZBA in a quasi-judicial capacity if that member participated on the ZBA as a voting member for that matter. This is a reciprocal provision to RSA 673:3, V (added in 2025) which requires a ZBA member who is also on the planning board to recuse themselves from any matter before the ZBA which was previously decided by or is pending before the planning board in a quasi-judicial capacity if the member participated at the planning board as a voting member.

Effective Date: June 21, 2026
Statute Amended: RSA 673:7