



Act 79 passed the Vermont Legislature June 2007. It made a number of changes that affect permitting of wireless communications facilities, including local permitting. The following is a general outline of the changes enacted in Act 79; this is not a legal assessment and you should contact your own counsel about specific legal questions.

State and local level regulation

Wireless telecommunications land-use regulation can be state (Act 250 or Public Service Board) or local (local zoning bylaws or local ordinances). Sometimes either state or local regulation applies, sometimes both do, and sometimes neither does. Act 79 amended the authority granted municipalities to regulate wireless telecommunications facilities through local ordinances (specifically 24 VSA § 2291(19)), and through local zoning (specifically 24 VSA § 4412); similar changes were made to both of these forms of local regulation.

Very small antennas

Through changes made to the regulatory authority granted to municipalities, Act 79 preempts local regulation of some very small antennas. Act 79 specifically authorizes the installation of antenna masts that do not extend more than 12 feet above the building to which they are attached and attached antennas that are not larger in the aggregate than eight square feet on their largest faces. The Act allows an exception for local regulations structured to protect historic landmarks and structures.

No impact or “*de minimus*” facilities

Whether a municipality regulates the placement of wireless telecommunications facilities through ordinance or zoning bylaw, or not at all, Act 79 grants municipalities new flexibility to approve wireless facilities of any height that have little to no impact, even if the proposed facility may not be in strict compliance with the existing local regulations. This change was made because of the public’s need for better communications. It could be the needs of first responders, personal needs during an emergency, needs of tourists, or businesses. Specifically the Act directs local regulators to approve permits if they determine that wireless telecommunications facilities will have no impact or only a *de minimis* impact (an impact of minimal importance). Municipal officials make the determination of whether or not the facility will have a *de minimus* impact, but they must issue the permit if the determination is made.

Local churches, fire departments, farmers and private landowners are usually reimbursed for the use of their property by the service providers. Many consider this a very beneficial exchange.

Cabot and Maidstone used this new authorization in 2007.

State land use permits

Act 79 also amended existing state permitting processes and created one new process. Municipal officials have a role in each of these processes.

Frequently wireless facilities have required Act 250 approval. Act 79 changed the triggers under Act 250 for wireless communications facilities. Now Act 250 reviews are still triggered for communications support structures extending 20 feet above existing structures, or 50 feet above ground level (increased from 20 feet above ground level.) Projects reviewed through Act 250 may still require local land use permits.

In addition, instead of obtaining state and local land use permits for individual sites, an applicant ...which could be a town... may elect to seek a single permit through the Public Service Board for a network of at least 3 facilities which are part of an interconnected network, if the proposed facilities extend more than 50 feet above the ground. This is called the "Section 248a" process, and it is created by the new 30 VSA § 248a. Projects permitted through the Section 248a process do not require Act 250 or local land use permits. However, the PSB review must examine many of the same kinds of criteria reviewed in the Act 250 process. In the Section 248a process the PSB must also give substantial deference to recommendations of local and regional planning commissions regarding local and regional plans, and due consideration to existing state and local permits.

Timeline	None	None	None
Administered By	Local regulatory authorities	Local zoning authorities	Local regulatory authorities
Applied To	<p>Any antenna whose combined area of largest faces is less than 8 sq ft and whose structure does not extend more than 12 ft above the roof of the building to which it is attached does not require a permit.</p> <p>Antenna structures less than 20 ft in height do not require a zoning permit if located within the boundaries of a downhill ski area.</p>	<p>Municipalities may adopt zoning regulations governing wireless telecommunications facilities in a way that is consistent with state or federal law. This can include requirements to decommission or dismantle facilities and to post a bond to finance decommissioning or dismantling. Telecom facility applications will be approved by local officials if no, or de minimis impact will be caused by such facility.</p>	<p>An antenna is exempt if the combined area of the largest faces is not greater than 8 sq ft and if the structure does not extend more than 12 ft above the roof of the building to which it is attached. Exemption is lost if an antenna is to be placed on historic landmarks or structures. Telecom facility applications will be approved by local officials if no, or de minimis impact will be caused by such facility</p>

TELECOMMUNICATIONS LAND USE PERMITTING REGULATIONS	No Permit	Local Zoning	Local Ordinance
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Timeline	None	PSB must issue a final decision or identify a significant issue regarding a CPG petition within 60 days of filing date or petition is approved by operation of law.	Applicant must provide written notice of application at least 45 days prior to filing. PSB shall issue final determination within 90 days unless an issue is identified. If issue is identified, final determination is to be issued within 180 days. Effective July 1, 2010, no new applications for CPG are to be considered by PSB under this section.
Administered By	Natural Resources Board	Public Service Board	Public Service Board
Applied To	Any communications structure extending more than 20 ft above an existing structure or any new structure more than 50 ft above ground level, regardless of acreage. If review is prompted, it also includes all supporting facilities and infrastructure.	Placement of wireless communications facilities on electric transmission or generation facilities. Placement requires a CPG from PSB. CPG replaces need for Act 250 or local zoning permits.	Single application to construct or install 3 or more telecommunications facilities, each at least 50 ft above ground level, within 3 years as part of a network. Requires a CPG from PSB. If the procedures outlined in this section are used, the applicant is not required to obtain a local zoning permit or an Act 250 permit. Any ordinances adopted pursuant to 24VSA§2291(19) are preempted by this section.
TELECOMMUNICATIONS LAND USE PERMITTING REGULATIONS	10VSA§6001c (Act 250)	30VSA§248(n)	30VSA§248a