



# Enhancing the Role of Vermont Municipalities in Improving Efficiency in New Construction

Questions & Answers

## Procedures for Municipalities

**1) Exactly what information do municipalities present to an applicant for a residential building permit? Can we give them a digital link to the information instead of a printed copy? If so, how do we provide it? Can we send it in an email to them? Can we hand them a brochure that includes the URL?**

It is recommended that you provide an electronic copy of the code handbooks by email or providing the link to the online version. If they prefer a hard copy those are available for free from the Energy Code Assistance Center. The municipality may want to have a small number of hard copies available to provide if requested. Municipalities may elect to amend their application for a zoning permit to include a check box where the zoning administrator can indicate that the code has been provided to the applicant.

**2) What are municipalities required to give to an applicant for commercial construction?**

A copy of the commercial energy code (CBES), available from the Energy Code Assistance Center or online.

**3) Does a hard copy of the energy certificate have to be recorded with the municipality?**

Yes, the law requires that the person certifying compliance (i.e. Town Clerk) ensure that the energy certificate is recorded and indexed in the town land records. 30 V.S.A. §51(f)(1)

**4) Is seeing the complete certificate enough for a municipality to issue a Certificate of Occupancy (CO)? Does the municipality need to check whether it has been filed in the land records?**

Simply seeing the certificate is insufficient. While the statute places the obligation on the certifying individual or entity to "assure that the certificate is recorded and indexed in the town land records." 30 V.S.A. §51(f)(1), it also states the provision of that certificate to the municipality is a condition precedent to the issuance of a Certificate of Occupancy. This language suggests that an actual copy should be produced and should remain with the town. Furthermore, as municipalities have authority over and access to land records it is both practical as well as logical for a municipality to verify that the recordation of the certificate has occurred before issuing a certificate of occupancy. A notation on the certificate of occupancy of the Book, Page Number and Date of the recordation of the energy code certificate would be an effective and permanent means of demonstrating that the statute has been satisfied.

**5) Can I accept an email that says the certificate was completed?**

No. Municipalities that require a Certificate of Occupancy (CO) must be provided with a copy of the completed energy code certificate before they issue the CO. Municipalities may elect to accept an electronic version of a completed certificate. See answer to previous question for more detail.

**6) If energy code compliance is NOT required, how is the municipality supposed to document that? Is there a way to certify and record that compliance is NOT required?**

It is recommended that the municipality ask applicants to provide a written statement asserting that the code does not apply to their project, and why.

**7) If municipalities don't require permits for remodeling jobs, how should they ensure that remodeling jobs comply with the energy codes?**

Municipalities do not have any obligation to ensure compliance with energy codes. Their obligation under the law is, where applicable, to issue Certificates of Occupancy. In that situation, the municipality must be provided with the energy code certificate before the CO is issued. As noted above, it is suggested that municipalities verify the recordation of the energy code certificate prior to issuance of a CO.

**8) Does the municipality need to track the number of certificates filed?**

No.

**9) Who is responsible for completing the code certificate on commercial projects?**

Both the builder and the architect/engineer.

**10) For commercial projects, if there is no architect, who is responsible for filing the code certificate?**

The builder.

**11) Where can an online copy of the residential code handbook be found?**

A copy of the handbook can be found at  
[http://publicservice.vermont.gov/topics/energy\\_efficiency/rbes](http://publicservice.vermont.gov/topics/energy_efficiency/rbes)

**12) Where can an online copy of the commercial energy code be found?**

A copy of the commercial energy code can be found at  
[http://publicservice.vermont.gov/topics/energy\\_efficiency/cbes](http://publicservice.vermont.gov/topics/energy_efficiency/cbes)

**13) Where can we find information about Act 89?**

A copy of the legislation is available at <http://www.leg.state.vt.us/docs/2014/Acts/Act089.PDF>. Act 89 amends several different statutes that pertain to Building Energy Codes. Most of the provisions are contained in 30 V.S.A. § 51 and 24 V.S.A. §4449.

**14) What becomes of the Owner-Builder disclosure? Does that get filed somewhere?**

It is filed with the municipality and the Public Service Department - the same as the regular code certificate. Unlike the regular code certificate, it does not need to be filed until the property is up for sale, and it must be provided to potential buyers before entering into a purchase and sale agreement.

**15) What if the municipality's zoning bylaws require a Certificate of Compliance or a Certificate of Completion? Are these the same as a Certificate of Occupancy? Do we still have to require energy code compliance certificate before we issue these?**

Yes. The statutory definition of a C.O. includes a certificate of completion, certificate of compliance, and any other certification attesting to project completion. The Building Energy Code obligations in 30 V.S.A. § 51 relate to a certificate of occupancy as referenced in 24 V.S.A. § 4449(a)(2) and defined in 24 V.S.A. § 4303(11)(D).

**16) What is the guidance on how municipal regulations can be revised to allow the zoning administrator the authority to require the code certificate?**

If a municipality adopts bylaws that require a certificate of occupancy under 24 V.S.A. § 4449(a)(2) then the obligations of 30 V.S.A. § 51 also become effective. Municipalities who seek to implement Building Energy Codes through other avenues should seek the advice of their Town Attorney on how best to proceed.

## Legal Obligations of the Municipality

**17) What if a code certificate isn't complete or is wrong? Do municipal officials need to determine if it is filled out correctly?**

Although municipalities don't have an obligation to review code certifications for accuracy, they should reject obviously incomplete or incorrect certificates (such as not having a signature).

**18) Do municipal officials need to make sure the code certificate is signed?**

Yes, all certificates should be signed to be accepted

**19) Does a Zoning Administrator (ZA) need to determine "compliance" with the code or simply make sure a certificate is filed in the local land records?**

The ZA only needs to verify that the certificate has been recorded and indexed, not whether its content is correct. See #4, above.

**20) What happens if someone doesn't file a certificate? How does it relate to future property sales?**

The validity of a title is not affected by the failure to issue or submit a certificate. [30 V.S.A. § 51 (i)].

**21) What happens if someone doesn't file a certificate? How does it affect the municipality?**

The municipality is not affected.

**22) What happens if someone doesn't file a certificate? How does it affect the builder?**

If the certificate was not issued by a licensed professional engineer, a licensed architect or an accredited home energy rating organization, it was the obligation of the builder to do so. 30 V.S.A. § 51(f)(1) A person aggrieved by noncompliance with the statutory requirements has the right to initiate a legal action for damages. 30 V.S.A. § 51(g).

**23) What happens if someone doesn't file a certificate? How does it affect the owner?**

Whether the failure to file a certificate will have an impact on an owner is not possible to predict, as this is not determinative of whether the building was compliant with the applicable energy code. However, an owner if aggrieved by noncompliance with the statutory requirements has the right to initiate a legal action for damages. 30 V.S.A. § 51(g).

**24) What happens if someone doesn't file a certificate? How does it affect the architect?**

On commercial projects, the architect may be liable under 30 V.S.A. § 53(d). On residential projects, the architect has no legal obligation regarding the energy code unless they sign the code certificate. 30 V.S.A. § 51(f)(1) and 30 V.S.A. § 51(g).

**25) Does the municipality face any liability issues if it fails to comply with the provisions of Act 89?**

A municipality may always be held liable for failure to comply with a statutory directive.

**26) What if the builder filed a certificate but actually hasn't complied with the building energy codes (i.e. the construction itself is not compliant)? Can the municipality be held liable even it complied with the requirements of Act 89, e.g. required the builder to record the energy certificate?**

No, the municipality cannot be held liable. If the municipality is provided the energy certificate, and then issues a Certificate of Occupancy on that basis, it has complied with its legal obligations. If a CO has been issued based on a misleading energy certificate, then the builder may be sued by the owner for failing to comply with code provisions.

**27) If the municipality issues the Certificate of Occupancy in accordance with Act 89, but the builder never properly files the energy code compliance certificate, can the municipality be held liable?**

The use of the word "file" in this question creates confusion. Pursuant to the statute there is no obligation to "file" anything. The certifying entity or individual must RECORD the energy code certificate, and there is a municipal obligation to ISSUE the CO. If a municipality issues a CO without having first been provided with a copy of the completed certificate they could be held liable.

**28) How can the municipality ensure that the energy code was provided to an applicant?**

The building permit application could be amended to include documentation that the code was provided.

**29) Is the municipality liable if the builder/owner/architect files a false certificate?**

No.

## Mechanics of How the Code Works

### 30) Which projects need to comply with the energy code?

All new construction and additions, and most renovation projects that effect the energy use of the building (unless expressly exempt). Examples include creating new conditioned space, changing the location of the thermal envelope, adding insulation, replacing windows, and some types of changes to heating and cooling systems. Examples of work that does NOT need to comply includes spaces not heated or cooled, regular maintenance and repair, storm windows, and existing walls, ceilings and floors if the cavities are not exposed.

### 31) Who is required to file the code certificate?

Both the builder and architect/engineer for commercial projects. Just the builder for residential projects.

### 32) What projects qualify for the owner-builder exemption?

An owner-builder must own the building, must live in the building, and must be the individual directing the details of construction.

### 33) What recourse does an owner have if a previous owner-builder did not follow the code?

There is no recourse as an owner-builder does not have to follow code, although they do need to disclose the nature and extent of any non-compliance by completing an "Owner/Builder Disclosure Statement," available in the RBES Handbook.

### 34) Does a project need to comply with the energy code that is in effect when the application is filed or the code that is in effect when construction starts?

Residential projects need to comply with the energy code that is in effect when construction starts. For Commercial projects, persons submitting an application for any local permit authorizing commercial construction, or an application for construction plan approval by the Commissioner of Public Safety pursuant to 20 V.S.A. chapter 173, before the effective date of the amended CBES shall have the option of complying with the applicable provisions of the earlier or the amended CBES. After the effective date of the original or the amended CBES, any person submitting such an application for commercial construction in an area subject to the CBES shall comply with the most recent version of the CBES.

**35) Do seasonal homes need to comply?**

Yes, if they are heated or cooled using either electricity or fossil fuels. The code does not distinguish between year-round and seasonal homes. They are subject to the same requirements, except for hunting camps, which are specifically exempt from the code.

**36) What happens if the code certificate is not available at the time of closing?**

Lack of a code certificate does not cloud the title, so the sale can go ahead as long as all parties are willing.

**37) Does the lack of a certificate cloud the title?**

No.

## Other Questions

**38) How are the stretch codes different from the current energy codes?**

Stretch codes are defined in state statute as a building energy code that achieves greater energy savings than the base energy code. The stretch code may be voluntarily adopted by municipalities. When the Department adopts a residential stretch code, it shall be required for all residential projects that go through the Act 250 process. The Department also plans to develop a Commercial stretch code that the Act 250 Commissions may use to define what is “best available technology,” which is the level required for Commercial projects that go through the Act 250 process. The current base energy codes are mandatory state-wide and will continue to be so except for Act 250 projects as described above.

**39) If we want to adopt a stretch code, how do we do that?**

The stretch would be adopted using the same process as any other municipal regulation.

**40) Is there model language for stretch codes in Vermont?**

Not yet, but the development is in progress. The Public Service Department anticipates adopting the stretch code by the end of 2014.

**41) Should municipalities amend permit applications and/or Certificates of Occupancy to include reference to the energy codes?**

Amending permit applications and/or Certificates of Occupancy is a good way to remind everyone of the requirements and to document that the municipality has fulfilled its obligation.

**42) If a home is LEED certified, does that mean that it also meets the code?**

Not necessarily. Although they both have efficiency requirements, there are some things required by the code that are not covered in the LEED system.

**43) When will the next energy code revision take place?**

Meetings began in February of 2014 and the new code will likely be adopted by the end of December 2014, with an effective date of March 2015. (The effective date cannot be sooner than 3 months after the adoption date.) Additional information on the energy code update is available at: [http://publicservice.vermont.gov/topics/energy\\_efficiency/code\\_update](http://publicservice.vermont.gov/topics/energy_efficiency/code_update)

**44) How does Efficiency Vermont assist municipalities with meeting the energy code?**

The Energy Code Assistance Center (ECAC), operated by Efficiency Vermont, is the central clearinghouse for information about the code. It provides printed materials and workshops, and maintains a toll-free telephone hotline at 855-887-0673. Municipal officials are invited to call the ECAC at any time.

**45) If the top of my garage is converted to an office, which code is applicable -- the commercial code or the residential code?**

This would likely be the residential code.

**46) Does the Division of Fire Safety have any obligations regarding the energy codes?**

Fire Marshals check for the CBES certificate posted on site and list a missing certificate as a deficiency.

**47) What can Efficiency Vermont do to assist an applicant with meeting the code?**

Perhaps the easiest way to comply with the code for new construction is to enroll the project in one of Efficiency Vermont's above-code programs. Either the owner or the builder can enroll. For commercial projects, a member of the design team, such as the architect, can initiate the enrollment process for the owner. The services are free, and most projects qualify for an incentive from Efficiency Vermont. Code support is provided for both residential and commercial projects.

For residential projects, participants get project-specific technical assistance and a Home Energy Rating, along with help meeting the energy code. A technical advisor will evaluate whether the proposed project will meet the code and if not, offer options for any needed changes. Efficiency Vermont staff also fill out the energy code certificate so that it is ready for the builder's signature.

For commercial projects, the principal designer (usually the architect) and the builder are directly responsible for meeting the energy code and completing the CBES certificate. Efficiency Vermont's assigned Energy Consultant can review specific code questions or issues that the project team may have and provide general guidance about code compliance.

**48) What else can I do to raise awareness in my municipality about the energy code?**

Efficiency Vermont has produced the "Municipal Guide for Vermont Energy Codes and Above-Code Programs" that includes information about several options on how municipalities can raise awareness the code and above-code programs. For a copy of the guide, go to: <http://www.encyvermont.com/For-My-Business/Solutions-For/Municipal-State-Government/Overview>