



Bylaw Preparation and Adoption

Overview

Bylaw is an old term for a local law that is adopted by a municipality or organization chiefly to govern its members and manage its affairs. A bylaw is a form of community self-regulation that, in Vermont, represents an extension of the police power of the state, by charter or statute, to municipalities. The words "bylaw" and "ordinance" are often used interchangeably. Only bylaws that regulate land use and development are covered under Chapter 117; other types of municipal ordinances are authorized under separate chapters of state law.

Under Chapter 117, Vermont municipalities are authorized, but not required, to adopt bylaws that regulate land use and development. A municipality may adopt one or more bylaws to protect public health safety and welfare, and to control the type, pattern and pace of development within

its borders. Ideally, bylaws, along with other plan implementation tools, should help to create better communities. Land use regulations necessarily differ from one community to the next. However, any municipality that regulates land use must follow specific Chapter 117 requirements governing the preparation, adoption and repeal of bylaws and bylaw amendments. **To adopt a bylaw, at a minimum, a municipality must have in place:**

- A **planning commission**, to develop and/or review proposed bylaws and bylaw amendments;
- An **adopted municipal plan**, currently in effect, that provides the basis in public policy for bylaw development and adoption (*see Bulletin #2 Conformance with the Municipal Plan*); and
- The **administrative capacity** to administer and enforce the regulations once adopted.

"Bylaw" is a modern form of the Middle English word *bilawe* dating from the 14th century and, according to *Merriam Webster's Dictionary of Law*, is likely derived from Old Norse terms for town (*byr*) and law (*log*).

Bylaw Preparation

Drafting. By statute, the Planning Commission, is responsible for either preparing or "directing" the preparation of bylaws under Chapter 117 [§4441]. The actual work may be done by staff, planning commissioners, subcommittees, attorneys or planning consultants, but the Planning Commission is ultimately responsible for, and should take ownership of, the initial draft. It's the Commission's job to present a proposed bylaw to the community at large - to explain why it's needed, who it affects, and how it will work - so it's important that commissioners know what's in it!

A proposed amendment or repeal of a bylaw may be prepared by the Planning Commission, or by another person or group for submission to the Planning Commission. If a proposed amendment or repeal is supported by a petition signed by at least five percent of municipal voters, the Planning Commission can correct "technical deficiencies" (e.g., spelling, section numbering or cross referencing) but cannot make any other changes to the proposal.

A Note on Drafting Regulations...

Writing local regulations that can be fairly administered and enforced - and that may someday be challenged in court - can be a daunting task. Drafting bylaws requires some knowledge of Chapter 117 and related case law, familiarity with the municipal plan, understanding the community's capacity to administer regulations, and some savvy regarding the local political climate for regulation. Usually no one person or small group can cover all these bases.

It often takes staff, one or two dedicated volunteers, or paid consultants to do the drafting - but all planning commissioners should be actively involved in bylaw development, at least to review and comment on drafts. It's also a good idea to run proposed language by your municipal attorney.

Technical assistance for bylaw development and adoption is available from your regional planning commission and the Vermont League of Cities & Towns. If you need to hire help, consider applying for a Municipal Planning Grant from the Vermont Department of Housing & Community Affairs.

Planning Commission Report.

When considering a proposed bylaw or amendment - including a "petitioned amendment" - the Planning Commission is required to prepare and approve a written report. The report must include a brief explanation of the proposed bylaw, amendment or repeal, a statement of its purpose as required for public notice, and findings regarding how the proposal:

- Conforms with or furthers the goals contained in the municipal plan, including the effect on the availability of safe and affordable housing,
- Is compatible with proposed future land uses and densities of development as set forth in the municipal plan, and
- Carries out, as applicable, any specific proposals for planned community facilities.

A single report may be prepared to cover both proposed plan and bylaw amendments. A reporting form is available from the Vermont Department of Housing & Community Affairs. For more information on determining bylaw conformance with the municipal plan, see *Bulletin #2 Conformance with the Municipal Plan*.

Planning Commission Hearing.

Once the Planning Commission has a draft ready for public review and comment, it must hold at least one formal public hearing, warned in accordance with Chapter 117 notice requirements. Prior to the formal hearing process, it may be beneficial to hold one or more community forums to help shape the development of the bylaw.

Note: If a "petitioned bylaw" amendment is under consideration, it must proceed "promptly" to a warned public hearing.

At least 15 days before the date of the hearing (not including the hearing date), the Planning Commission must send a copy of the draft and the Planning Commission's written report - with proof of receipt or by certified mail - to each of the following:

- The chairperson of the planning commission of each abutting municipality or, in the absence of a planning commission, to the municipal clerk;
 - The executive director of the regional planning commission;
 - The Vermont Department of Housing & Community Affairs;
- Any of these parties may submit

Reporting Requirement for Proposed Bylaws

Prior to the enactment of Act 115 (which went into effect on July 1, 2004), report preparation was recommended but not required. **Under Act 115 the reporting requirement was mandated**, and related criteria were substantively changed to require that the Planning Commission determine whether a proposed bylaw or amendment conforms with the municipal plan. The intent of this change was to clearly establish and strengthen the relationship between the municipal plans and an implementing bylaw.

comments on the proposal in writing, or appear and be heard at the Planning Commission's public hearing, or in any other bylaw adoption proceeding.

Submission to the Legislative Body. After public hearing, the Planning Commission may make revisions to the proposed bylaw or amendment and to their written report for submission to the local "Legislative Body" (i.e., the town selectboard, village trustees, or city council or aldermen). The Planning Commission may warn another public hearing on proposed revisions, but it isn't required to do so. In order to initiate the adoption process, however, the Commission must formally transmit its draft and report to the Legislative Body. Simultaneously with this submission, the Planning Commission must also file a copy of the draft bylaw and report with the municipal clerk for public review.

Note: If requested by the Legislative Body, or for bylaw amendments or repeals supported by petition, the Planning Commission must "promptly" submit the proposal to the Legislative Body following their public hearing, with changes only to correct technical deficiencies, together with its report and any recommendations or opinions it considers appropriate.

Public Hearing Notice Requirements

Bylaw Adoption, Amendment & Repeal [§4444]

Public notice must be given at least 15 days prior to the hearing date by:

- **Publication** of the date, place and purpose of the hearing in a newspaper of general circulation within the municipality, and
- **Posting** of the same information in three or more public places within the municipality.

The published and posted public notice must include either the full text of the material, or the following:

- A statement of purpose
- A map or description of geographic areas affected
- A table of contents or list of section headings, and
- A description of the place in the municipality where the full text may be examined.

As an alternative, the municipality may make reasonable effort to mail or deliver copies of the full text or the summary, with the public hearing notice, to each voter on the voter checklist and to each landowner on the municipal grand list.

Bylaw Adoption

Act 115 included major changes to the bylaw adoption process under Chapter 117, particularly in "rural towns." The intent of these changes was to make the bylaw adoption - and particularly the amendment process - more efficient, to keep bylaws current, relevant, and in conformance with municipal plans.

Legislative Hearing. Under Chapter 117 [§4442], the Legislative Body is responsible for bylaw adoption. Prior to adoption, the Legislative Body must hold at least

"Rural" or "Urban"? §4303

Rural Town: *A town having, as of the date of the most recent United States census, a population of less than 2,500 persons, as evidenced by that census, or a town having 2,500 or more but less than 5,000 persons that has voted by Australian ballot to be considered a rural town [§4303(25)].*

Urban Municipality: *A city, an incorporated village or any town that is not a rural town [§4303(31)].*

one additional public hearing, warned in accordance with Chapter 117 notice requirements. The first public hearing is supposed to be held not less than 15 nor more than 120 days from the date of submission by the planning commission; however, failure to meet this 120-day deadline does not invalidate the adoption process or the validity of any repeal. The "waiting period" was reduced from 30 to 15 days under Act 115 to help expedite the amendment process.

Note: The warning for the Legislative Body's first public hearing triggers the official adoption process. For more information about the review of new permit applications during the adoption process for proposed bylaws, see *Bulletin #7 Zoning Permits*.

Changes. The Legislative Body can make minor changes to a proposed bylaw, amendment or repeal, but not less than fourteen days prior to their final public hearing. If at any time "substantial changes" are made in the "concept, meaning or extent" of the proposed draft, another public hearing must be warned. Copies of any changes must be filed with the Municipal Clerk and the Planning Commission at least ten days before the public hearing. The Planning Commission is then required to amend its report to reflect the changes made by the Legislative Body, and submit the report as amended to the Legislative Body prior to or at the public hearing.

Routine Adoption. Routine bylaw adoption is done by a majority vote of the Legislative Body at a meeting held after their final public hearing. This once applied only to "urban" municipalities, but now also applies in "rural" towns unless the Legislative Body or voters take special action. A bylaw adopted by the Legislative Body takes effect 21 days after adoption unless, within 20-days of adoption, five percent of the voters file a petition for adoption by "popular vote". The Legislative Body must then warn a town meeting for a vote by Australian ballot.

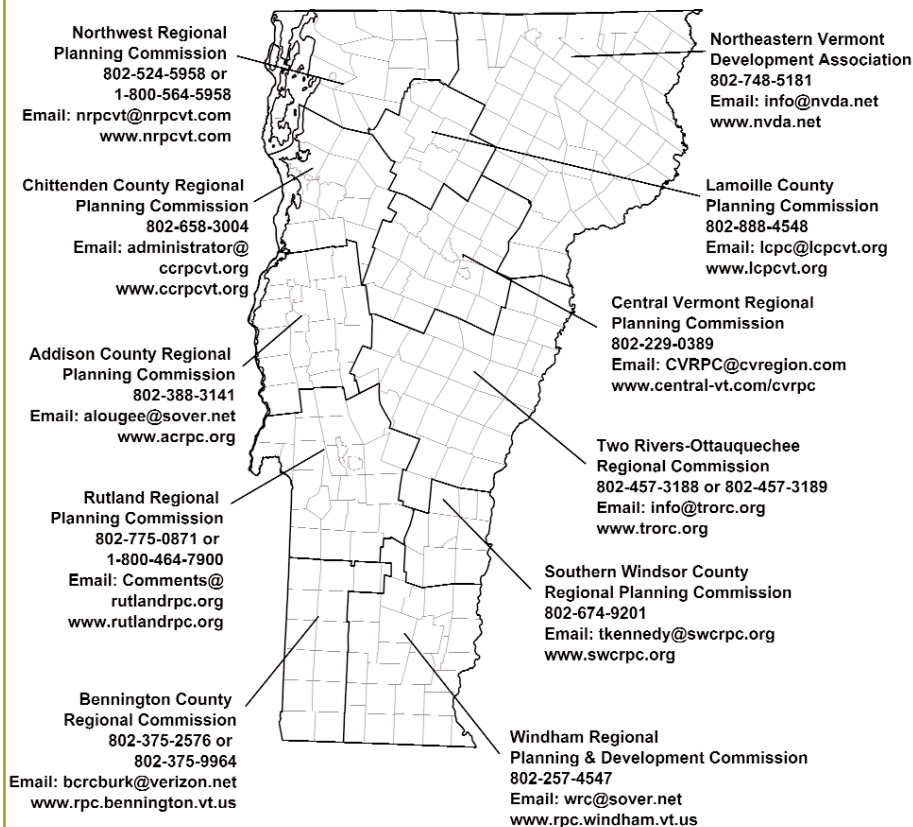
Note: A "rural town," by action of the Legislative Body (e.g., a formal vote or resolution by the Selectboard) or by a vote of the town at a regular or special town meeting, can elect to adopt bylaw amendments and repeals by Australian ballot similar to the process in effect for rural towns prior to July 1, 2004. Once this decision is made by the legislative body or the voters however, it can only be rescinded by voters at a subsequent regular or special town meeting. Towns should consider carefully before giving up the ability to make amendments easily through action of their Legislative Body.

Timing. If no action is taken on a proposed bylaw, amendment or repeal within one year of the date of the final Planning Commission hearing, it is considered disapproved unless a petition is filed within 60 days of the deadline, by five percent of the voters, for a meeting to vote on the proposal by Australian ballot.

Distribution. Copies of bylaws, amendments and repeals - as adopted - must now be sent to the regional planning commission and to the Vermont Department of Housing and Community Affairs [§4445].

Bylaw Preparation and Adoption Checklists for both the Planning Commission and Legislative Body are available at www.vpic.info.

**Contact information:
Regional Planning Commissions**



Chapter 117 Bulletins

The following ten bulletins were published in November 2004 to provide information about the changes to 24 V.S.A. Chapter 117, the state statute governing local planning and regulation, enacted in 2004. These all are available through www.vpic.info and from the Education and Training Collaborative partners listed below.

1. **Chapter 117 Overview** (legislative intent and effective dates)
2. **Conformance with the Municipal Plan**
3. **Permissible Regulations**
4. **Bylaw Preparation & Adoption**
5. **Required Provisions & Limitations**
6. **Equal Treatment of Housing**
7. **Zoning Permits**
8. **Development Review Procedures**
9. **Appeals**
10. **Appropriate Municipal Panels**

Vermont Land Use Education and Training Collaborative

Working Together to Provide Improved Learning Opportunities for Vermont's Local Boards and Commissions

Questions about this bulletin and other chapter 117 materials produced by the Collaborative may be directed to the following members of the Vermont Land Use Education and Training Collaborative Steering Committee. For links to websites go to "About Us" at www.vpic.info.

Center for Rural Studies (CRS) at the University of Vermont
207 Morrill Hall
University of Vermont, Burlington, VT 05405
(802)656-3021

Department of Housing and Community Affairs (DHCA), Planning Division
National Life Building Dr. 20
Montpelier, VT 05620-0501
(802)828-5249

Vermont Association of Planning and Development Agencies (VAPDA)
Contact your Regional Planning Commission

Vermont League of Cities and Towns (VLCT)
89 Main Street, Suite 4
Montpelier, VT 05602
(802)229-9111

Vermont Secretary of State's Office
26 Terrace Street
Montpelier, Vermont 05609
(802) 828-2363

Vermont Planners Association (VPA)
c/o VLCT
89 Main Street, Suite 4
Montpelier, VT 05602

FOR MORE INFORMATION GO TO WWW.VPIC.INFO