



Statutory Authorization: 24 V.S.A. §§4401, 4402, 4410 / **Type:** REGULATORY

Related Topic Areas: Design Review; Home Occupations; Housing Regulations; Open Space & Resource Protection Regulations; Performance Standards; Planned Unit Development; Subdivision Regulations; Zoning Regulations

Land Use & Development Regulations

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Overview

Regulations are one of the most effective and potentially most controversial ways to implement a municipal plan. Regulations can include municipal bylaws or land use regulations adopted under the Vermont Planning and Development Act (24 V.S.A. Chapter 117), as well as municipal ordinances enacted under other chapters of Title 24, such as local housing and building codes and health, road, sign, wastewater, and impact fee ordinances. Land use regulations that are prepared and adopted under Chapter 117, such as zoning and subdivision regulations, must conform to the municipal plan (see related topics).

Plans may also recommend other types of regulation, including road ordinances, to meet community goals and objectives. All regulations enacted by the municipality, in order to withstand legal challenge, should have some basis in locally adopted public policy, such as the municipal plan, and should further legitimate public purposes.

If a policeman must know the Constitution, then why not a planner?

—Chief Justice William J. Brennan Jr.

It's important, when drafting regulations, to be aware of basic rights and protections under our federal and state constitutions—including those found in the following Amendments to the U.S. Constitution:

First. The rights of freedom of speech, assembly, and religion.

Application

Land use and development regulations—the tools authorized under Chapter 117 to regulate growth, development, and associated impacts—include but are not limited to tools presented in the accompanying table (page 16-2). Many of these are described in more detail in related topic papers and are incorporated in a variety of ways under local regulations.

In addition to the standard zoning and subdivision regulations adopted by many Vermont municipalities, Chapter 117 also allows for the following types of regulations that may incorporate one or more of the tools listed:

- *Interim bylaws* that may be adopted for up to three years to address specific development concerns while more permanent regulations are being developed.
- *Freestanding bylaws*, for example flood hazard area or shoreland regulations that apply only to specified areas of the municipality. These can be

Fifth. The right, if to be deprived of life, liberty or property, to due process and equal protection under the law.

Fourteenth. The right of just compensation for the taking of private property for public use.

These have direct bearing on how local regulations are crafted, administered and enforced—as reflected in Chapter 117 requirements and limitations.

What's a Bylaw?

Bylaws, ordinances, and codes are all forms of local regulation. The term *bylaw* is used in Chapter 117 to refer to land use regulations (like zoning and subdivision), which helps distinguish these from other types of local codes and ordinances adopted under other chapters of Title 24 (the Vermont statutes governing municipalities).

Bylaw adoption and amendment procedures under Chapter 117 also differ somewhat from the adoption requirements for other types of local ordinances (see 24 V.S.A. Chapter 59).

adopted by municipalities that don't have, or don't want, more comprehensive regulations.

- *Unified development bylaws* that integrate more than one type of regulation and, at minimum, consolidate zoning and subdivision regulations.

In Vermont, all municipal authority—including the authority to regulate land use and development—is derived from the state through municipal charters and state statutes, including the Vermont Planning and Development Act. Communities need to abide by and work within state law that, for plan implementation purposes, requires some knowledge of Chapter 117. Fortunately, Chapter 117 is broadly enabling; it offers a variety of regulatory options to implement local plans. It also, however, imposes limitations, including restrictions on the regulation of certain types of development and requirements for equitable administration and enforcement.

Regulatory Tools at a Glance

As Enabled by 24 V.S.A. Chapter 117

Tool	Description/Use <i>(numbers refer to relevant topic papers)</i>
<p style="text-align: center;">Zoning Regulations</p> <p style="text-align: center;"><i>Topic Paper #30</i></p>	<p>Regulates allowed types and densities of development within designated zoning (land use) districts. Zoning districts may include, but aren't limited to:</p> <p><i>Rural districts</i> (e.g., that limit development to promote working landscapes) #19</p> <p><i>Downtown, village and new town centers</i> (to promote concentrated, higher-density, mixed-use development in designated areas) #7, #9</p> <p><i>Airport districts</i> (to avoid airport hazards) #24</p> <p><i>Shoreland and floodplain districts</i> (to protect water quality and avoid flood hazards) #10</p> <p><i>Historic and design review districts</i> (to regulate building design and preserve historic or district character) #11</p> <p>Zoning bylaws may also include:</p> <p><i>Lists of uses</i> allowed by right (permitted uses) or subject to board review (conditional uses) #30</p> <p><i>Dimensional standards</i> (e.g., lot size, frontage, setback, coverage requirements) by district #30</p> <p><i>District standards</i> (applying to all development within a particular zoning district) #30</p> <p><i>General standards</i> applying to all development (e.g., access requirements, stream setbacks, stormwater, water and wastewater system requirements) #30</p> <p><i>Use standards</i> for specified uses (e.g., wireless facilities, industrial parks, gravel pits, etc.) #30</p> <p><i>Conditional use standards</i> (to evaluate the impacts of development on the character of the area, neighboring properties, facilities and services, natural and cultural features, etc.) #30</p> <p><i>Site plan review standards</i> (to evaluate site layout and design, including parking, circulation, landscaping, screening, etc.) #30</p> <p><i>Parking standards</i> (to regulate on-site parking and loading facilities) #20</p> <p><i>Performance standards</i> (e.g., to regulate lighting, noise, and other potential nuisances or hazards) #21</p> <p><i>Inclusionary zoning</i> (requiring that a certain percentage of housing developed is affordable to low- and moderate-income households) #14</p> <p><i>Waivers</i> (from dimensional requirements, as needed to accommodate desired development) #30</p> <p><i>Renewable energy access</i> (requiring development to be sited and designed to retain access to renewable energy resources) #30</p>
<p style="text-align: center;">Site Plan Regulations</p>	<p>Allows development review of site layout and design. Most commonly included as part of Zoning Regulations but also may be adopted as a free-standing bylaw or under other bylaws. #30</p>
<p style="text-align: center;">Subdivision Regulations</p> <p style="text-align: center;"><i>Topic Paper #26</i></p>	<p>Regulates patterns of development, including the subdivision of land and related infrastructure improvements. Regulations may include standards for:</p> <ul style="list-style-type: none"> • Protection of natural and cultural features (e.g., building envelope provisions) • Lot layout and design (e.g., to maintain historic settlement patterns, and avoid fragmentation of open space or resource areas) • Infrastructure improvements (e.g., roads, sidewalks, parks, utilities) • Related financing and legal documentation (sureties/bonds, plat and deed restrictions, homeowner association and development agreements, etc.)
<p style="text-align: center;">Planned Unit Development</p>	<p>Allows for the modification or waiver of dimensional requirements (e.g., clustering) in association with subdivision or zoning regulations (to allow for more efficient use of land, accommodate higher densities of development, promote affordable housing, protect open space, etc.) #22</p>
<p style="text-align: center;">Local Act 250 Review</p>	<p>Allows for local review of Act 250 applications, in association with subdivision and zoning review, to locally evaluate impacts to municipal and educational services and conformance with the municipal plan under relevant Act 250 criteria.</p>
<p style="text-align: center;">Official Map</p>	<p>Designates land for proposed public facilities in advance of other development or redevelopment (for consideration in development review, and eventual public acquisition) #17</p>
<p style="text-align: center;">Phasing</p>	<p>Allows for the phasing of development under zoning or subdivision regulations in conformance with an adopted capital budget and program. #26, #30</p>
<p style="text-align: center;">Transfer of Dev. Rights</p>	<p>Allows transfers of development density from designated "sending" areas (e.g., rural zoning districts) to designated "receiving" areas (e.g., downtown or village districts). #28</p>

Considerations

All local officials involved in drafting and administering land use regulations should have some familiarity with Chapter 117 and related case law. Copies of the statutes are available from your regional planning commission, the Department of Housing and Community Affairs, and online.

Land use regulations represent the ultimate form of local governance and control. They necessarily infringe on the rights of individual property owners to achieve public goals and objectives. As such, proposed regulations inevitably generate some controversy, which may increase exponentially in relation to the types and levels of restriction proposed.

Writing Regulations

Drafting a zoning bylaw, or any other type of regulation, takes careful wordsmithing. It's important to consider and clarify meanings conveyed by words and sentences. Even the placement of a comma can change or confuse the interpretation of a regulatory standard. Some suggestions:

Use a direct, active voice.

Avoid an ambiguous, passive voice. For example: "The developer shall submit a site plan for board approval" rather than "A site plan shall be submitted prior to project approval by the board."

Use *must* or *shall* if something is mandatory. If something is optional the statutory term is *may*. *Should* is confusing.

Use punctuation with care (colons, semicolons, and parentheses). Meanings can change with placement as can the use of terms like *and* and *or*. If a sentence or phrase is confusing, run it by your attorney.

Use simple language with clear meaning. Avoid legalese and technical jargon. When statutory or technical terms are used, make sure they are clearly defined.

Consideration of existing land uses, and associated landowner interests, is especially important in developing more restrictive zoning districts or regulatory protections—especially as needed to avoid legitimate takings claims. Regulations should include incentives, such as density bonuses and waivers, as well as necessary restrictions.

All regulations under Chapter 117 are prepared or reviewed by the planning commission and adopted either by the legislative body or by Australian ballot, following required warned public hearings. No regulation, however, should be developed in the dark—active public and landowner involvement is critical. Given the number of regulatory tools available, community feedback will help the planning commission determine which tools, if any, are appropriate and acceptable for local use.

It is essential that the legislative body and public at large get involved in determining what bylaws are adopted in an open, democratic process. However, once the bylaws are adopted, public involvement in the permitting process becomes strictly defined, and any attempts by the legislative body to influence decision making becomes inappropriate.

Be prepared to make a good case for the adoption of a proposed regulation and to modify or adapt it as needed to balance community and landowner interests. Your municipal attorney should also review proposed regulations prior to adoption.

The capacity of the community to administer and enforce local regulations should also be considered. The more complex the regulation, the more staff or professional assistance will be needed. Regulations that can't be adequately administered and enforced are at best ineffective and at worst result in unfair treatment, bad feelings, and court challenges. The community should be prepared to take on the staffing, administrative, and legal costs inherent in the adop-

Act 250 and Other State Regulations

Instead of adopting municipal land use regulations, some towns in Vermont rely on Act 250, the statewide permitting process, to provide regulatory implementation of their municipal plan. Development projects in towns without zoning and subdivision regulations must obtain Act 250 permits at lower thresholds than those in towns with both types of regulations.

In a town without local bylaws, commercial developments on one or more acres or a subdivision of six or more lots must obtain Act 250 permits. In towns having zoning and subdivision bylaws the corresponding thresholds are ten-plus acres and ten-plus lots. A detailed town plan that provides specific, directive language about what kind of development is or is not desired can be used to make findings for or against an application under Criterion 10 (conformance with the town plan) in Act 250.

Other state regulations also affect the way development takes place and need to be considered both when writing local bylaws as well as when administering them. State permits may be required for wetlands, highway access, water supply and wastewater disposal, fire safety, and other issues. Contact your state permit specialist for assistance. A list of permit specialists can be found at www.anr.state.vt.us/dec/ead/pa/, or follow links at www.vpic.info.

tion of a regulation. Some, but not all, of these costs may be recovered through administrative fees.

Finally, since regulations are subject to change over time, relying on regulations alone may not be enough to accomplish long-term goals and objectives such as open space protection. To be most effective, regulations should be used in conjunction with other nonregulatory tools, including landowner incentive and assistance programs.

Bylaw Preparation and Adoption

24 V.S.A. §§4441, 4442

1. Proposed Bylaw

Planning commission prepares (or reviews) a proposed bylaw, amendment, or repeal. If a proposal is submitted by petition, it must proceed through the next steps, with only technical corrections.

2. Written Report

Planning commission prepares a written report on the proposed bylaw, amendment, or repeal that addresses conformance with the municipal plan and the effect on housing.

3. Public Hearing

Planning commission holds one or more warned public hearings on the proposal, their report and recommendations. Unless submitted by petition, changes may be made to the proposal following public hearing(s).

Public Involvement

Engaging the townspeople, including affected landowners through public forums and other means and discussion with the legislative body, is not required at this stage but a good practice.

4. Submit to Legislative Body

The Planning commission, following public hearing(s), submits the proposal with any proposed changes and their report to the legislative body for consideration.

5. Public Hearing

Within 120 days of receipt, the legislative body must hold the first of one or more warned public hearings. Changes may be made up to 14 days prior to the final hearing but, if substantive, must be submitted to the Planning Commission for review.

Bylaw Adoption

Under Chapter 117, bylaws and related regulatory tools (such as official maps) are normally prepared by the planning commission for consideration and adoption by the legislative body—unless a municipality decides to adopt all its land use regulations by Australian ballot vote. Both the planning commission and legislative body are required to hold warned public hearings on proposed regulations prior to adoption.

Anyone can submit a proposal to the planning commission for consideration. If it is supported by a petition of 5 percent of the voters, the planning commission may make only technical changes to the proposal before holding a hearing and forwarding it to the legislative body.

If a proposed bylaw, amendment or appeal is not approved or rejected within one year of the planning commission's final hearing, it's considered "disapproved" unless 5 percent of voters petition, within sixty days of year's end, for a vote by Australian ballot.

Bylaw Administration

Land use and development regulations adopted under Chapter 117 are administered and enforced by an administrative officer and one or more "Appropriate Municipal Panels" (the planning commission, zoning board of adjustment, or development review board) appointed by the legislative body. It is important that regulations define who is responsible for conducting different aspects of development review.

If a development review board is created, it takes on all the development review responsibilities that traditionally were assigned to either the planning commission or board of adjustment. This allows for one-stop shopping and gives the planning commission time to plan, but it may also dramatically increase the work load of the review board.

Local bylaws are enforced through the Environmental Court or the Judicial Bureau. Local decisions may be appealed to the Vermont Environmental Court.

6. Bylaw Adoption

The legislative body, following the final public hearing, either adopts the proposal, which goes into effect in 21 days unless a petition for a vote is received; or, in municipalities that have opted to vote on bylaws, they warn a vote by Australian ballot.

More Information

To learn more about bylaw adoption, administration, roles and responsibilities, appeals, and enforcement, see *Essentials of Land Use Planning and Regulation* available at www.vpic.info, or contact your regional planning commission. "Bylaw Adoption Checklist" and "Reporting Form" are also available on VPIC.