VERMONT LEAGUE OF CITIES AND TOWNS

HANDBOOK FOR VERMONT SELECTBOARDS

A Comprehensive Guide for
Vermont Selectboard Members

Serving and Strengthening Vermont Local Governments

The **Vermont League of Cities and Towns** (VLCT) was founded in 1967 as a nonprofit, nonpartisan organization dedicated to serving and strengthening Vermont local government. Today, VLCT supports its member municipalities by offering them a comprehensive insurance program, representation before the state and federal governments, and an extensive educational and technical assistance program.

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Founded in 2003, the **VLCT Municipal Assistance Center** (MAC) provides local officials with legal and technical assistance, consulting services, and educational workshops that increase the ability of local officials to serve their citizens. The Center also publishes handbooks for all major town officers and annual surveys on municipal salaries and benefits and current municipal practices. MAC staff have diverse backgrounds in public administration, municipal law, human resources, public finance, and planning and zoning.

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ABOUT THIS HANDBOOK

The Vermont League of Cities and Towns Municipal Assistance Center has prepared this *Handbook for Vermont Selectboards* as part of its series of publications to assist municipal officials.

It is not intended to be a substitute for the Vermont Statutes Annotated, but it should prove to be a valuable starting point. The office of selectperson covers a wide range of responsibilities, and we have made every effort here to cover them all. Additional sources of information are provided throughout the text, and, as always, you can call the Vermont League of Cities and Towns Municipal Assistance Center toll free at (800) 649-7915 with your questions.

This publication is designed to provide accurate and authoritative information with regard to the subject matter covered. Reasonable efforts have been made to insure that the information provided in this publication is accurate; however, Vermont League of Cities and Towns makes no warranty, express or implied, or representation that such information is suitable for any particular purpose or may be relied upon for any specific act, undertaking or course of conduct. In light of the ever-changing status of both statutory and case law, the Vermont League of Cities and Towns recommends that its members consult with an attorney before undertaking a specific course of action based on the material contained herein.

This April 2006 edition features a comprehensive re-write of chapters 1 through 4, and an update of the remaining chapters. Beginning in July of 2006, this manual will be available online at www.vlct.org. We plan to continue the comprehensive re-write of the remaining chapters and will publish them online as they become available.

Finally, please do not hesitate to contact us if you have suggestions for improvements or additional material you feel should be included in this handbook.

INTRODUCTION

A. WELCOME TO LOCAL GOVERNMENT

Congratulations, and welcome to the selectboard! You have been chosen for an office older than the state itself, but one that changes, in some respect or another, each time the Vermont Legislature convenes. During your term, it is likely that you will face issues as modern as the siting of a wireless telecommunication facility and as old as maintenance of the town's roads and bridges. It can be a tough job, with a lot of responsibility, but you are well qualified to get it done.

We are here to help. Founded in 1967, the Vermont League of Cities and Towns is a non-partisan, non-profit organization owned by Vermont's municipal governments. Today, all 246 of Vermont's cities and towns are members of the League. We provide services to these municipal members, as well as to over 135 associate member villages, counties, regional planning agencies and housing authorities. If you have any questions about this handbook or your role as a selectboard member, please call VLCT's Municipal Assistance Center at (800) 649-7915.

B. THE LEGAL AUTHORITY OF VERMONT SELECTBOARDS

Though Vermont has a strong tradition of local control and participatory democracy, Vermont's constitution does not actually grant any power or legal authority directly to the state's municipalities. Instead, towns and cities receive all of their legal authority from the Vermont Legislature. In Vermont, municipalities are truly political subdivisions of the state.

For better or worse, the Vermont Supreme Court has consistently held that Vermont municipalities only have those powers specifically delegated by the Legislature, and such additional functions as may be necessary to the exercise of those powers. The Court has said that any fair doubt concerning the existence of municipal power will be resolved against the municipality. *Petition of Ball Mountain Dam Hydroelectric Project*, 154 Vt. 189 (1990). When a question arises as to whether a municipality or local official has authority to act in a certain area, the municipality or official must identify the law that grants the authority to act; it is never enough to simply conclude that since there is no law prohibiting the contemplated action, the action is permissible.

C. THE MANY HATS OF SELECTBOARD MEMBERS

So, what are the responsibilities and authorities of a selectboard member? The Vermont Legislature and Supreme Court have stated:

> [Selectboard members] shall have the general supervision of the affairs of the town and shall cause to be performed all duties required of towns and town school districts not committed by law to the care of any particular officer. 24 V.S.A. § 872.
>
> It is crucial at the start of our analysis to emphasize that, absent some specific limitation on their authority, the [selectboard members] have the general supervisory power over town matters. *Kirchner v. Giebink*, 150 Vt. 172 (1988).
>
> The clerk and [selectboard members] are all elected officers of the town…. Each has certain duties to perform. Those of the clerk are not made subject to the approval of the

> [selectboard members]. They have general supervision of the affairs of the town, to be sure, and are charged with seeing to it that duties required of towns and school districts, and not committed to the care of any particular officer, are performed and executed…. The duty of keeping required records in the town clerk's office is, however, committed to the care of the town clerk. The [selectboard members] have no express power to require the town clerk who keeps his or her records in a lawful manner to conform to their ideas as to what method he or she shall use. *Town of Bennington v. Booth*, 101 Vt. 24 (1927).

Through this one statute and two cases, the Legislature and Supreme Court have roughly framed the parameters of the selectboard's job: The selectboard must perform the duties directly assigned to it by the Legislature and the duties assigned to the town generally, but not to any other town officer, board, or municipal entity (e.g., fire district or library); the selectboard must not interfere with the duties granted specifically to other town officers, boards and entities, and it may not perform acts which the Legislature has not authorized it to perform.

As you read further in this Handbook about the number and variety of duties and responsibilities given to selectboards, you will soon realize that Vermont local government does not strictly adhere to the traditional notion of separation of powers. While the state and federal constitutions establish and maintain three separate and distinct branches of government (executive, legislative and judicial), at various times, selectboard members will fill all three of these roles. For example, at a single meeting, a selectboard might act as a legislature in adopting an ordinance or bylaw, as an executive in setting employee salaries, and as a judge in holding a hearing to determine the fate of a wayward dog.

D. COMMUNICATION AND COOPERATION

The administration of Vermont local government can be complex. Many of the laws outlining the responsibilities of municipal officers actually predate Vermont's statehood. Many more have not kept pace with modern practice. Even those laws that have been revised by the Legislature can be vague and confusing. The responsibilities of municipal officers frequently overlap and clear lines of authority can be hard to identify. Yet, while Vermont's arcane laws can be frustrating, they can also allow for great flexibility and creativity. Towns can often find, within the law, room for unique solutions to their unique local challenges.

The keys to effectively navigating the complexity are communication and cooperation. Vested with wide-ranging responsibilities and empowered with broad authority, the selectboard members are the leaders of local government. Conflict on any governing board is inevitable, but it is imperative that selectboard members take the lead in fostering communication and cooperation in town government, not only with each other, but also within and among the town's other officers and boards. Effective service to your town requires no less.

SOME OF THE SELECTBOARD'S RESPONSIBILITIES:

- Selectpersons are responsible for general supervision of the affairs of town and must cause to be performed all duties required of the town not committed by law to the care of any particular officer.
- The selectboard may enact ordinances and rules in many areas including traffic regulation, regulating nuisances, managing solid waste, dogs and recreation, and establishing bike paths. Many of these are listed in 24 V.S.A. § 2291, but others are scattered throughout the statutes.
- The selectboard warns all town meetings and specifies business to be conducted at the meeting, including proposing an annual budget. If the town does not set the tax rate, the selectboard must set a tax rate that will raise the specific amount voted at town meeting.
- The selectboard is responsible for hiring, directing, and firing almost all town employees *unless the town has a Town Manager form of government*; for setting salaries if voters do not do so at town meeting, and for establishing and enforcing personnel policies.
- The selectboard must authorize all town expenditures by signing orders for the treasurer to draw town funds.
- The selectboard supervises the expenditure of the highway fund and has charge of keeping town highways in repair. It also is responsible for laying out, classifying and discontinuing town roads.
- The selectboard is responsible for animal control.
- The selectboard may borrow money for periods of less than a year in anticipation of taxes.
- The selectboard must fill all town vacancies until an election is held.
- The selectboard may license many operations within the town (e.g., liquor sales, restaurants, junkyards and entertainment).
- The selectboard appoints several minor town offices (e.g., fence viewers, pound keepers, inspector of lumber and tree warden).
- The selectboard appoints and removes planning commissioners unless the town has voted to elect them. In "rural towns," selectpersons serve as ex officio planning commission members. A "rural town" is a town with a population of less than 2,500 or a town with a population of at least 2,500 but less than 5,000 which has voted by Australian ballot to be considered a rural town. The selectboard adopts the town plan unless the town votes to adopt it by Australian ballot. It also holds public hearings on proposed zoning bylaws and may, in some circumstances, adopt zoning bylaws.
- The selectboard appoints police officers and *municipal* fire department officers.
- The selectboard appoints and may remove a town manager when a town has voted to adopt such form of government.
- The selectboard purchases all insurance for the town.
- The selectboard requires certain town officers to obtain a bond and sets the amount necessary.
- The selectboard regulates and issues certificates for junkyards.
- The selectboard controls cemeteries if there is not a cemetery commission.
- Selectboard members serve as members of the Board of Civil Authority.

E. A WORD FOR SELECTBOARDS OPERATING UNDER TOWN CHARTERS

Please be aware that this Handbook is prepared from the laws and court decisions of general application in Vermont. Town charters may grant specific powers that differ from the general ones. *Where your charter differs from the general law and differs from the information in this Handbook, town officials should rely on the charter first.*

F. HISTORY OF THE SELECTBOARD

Finally, we thank attorney Paul Gillies, former Deputy Secretary of State, for this bit of selectboard history:

> To learn about the historical origins of the office of selectpersons, we look to the traditional sources, from Alexis de Tocqueville to Lord Bryce to Sidney and Beatrice Webb. Actually, Lord Bryce led us to the Webbs, by seeing the clear historical antecedent of the New England town meeting in the traditional rural English parish vestry.
>
> The vestry began, according to the Webbs, in the early fourteenth century, as a reaction against the poverty of the local church and its clergy. The people of the parish recognized the need to regulate and fund local church functions, and formalized the governance of their communities by establishing the Easter vestry, an annual meeting of the people at which decisions could be made respecting the maintenance of the church and its grounds and the funding of the clergy. In the middle of the sixteenth century, toward the end of the reign of Henry VIII, the parish was ordered by the king to supply harness and arms to his soldiers, and the parish for the first time in its history took on the duty of serving a civil function.
>
> To raise the money needed to fund these civil functions, the vestry levied a church tax, and established public offices to administer its business, which at times included the building and repair of highways and bridges, the maintenance of common pasturage, and supplying the community with local law enforcement. The direct antecedent of the office of selectpersons was churchwarden or select vestryman, and its incumbents were personally responsible for fulfilling the duties of his office and could be held personally liable for failing to do so.
>
> The office was unpaid. It was filled by rotation, as a compulsory duty of each member of the community in turn, according to the location of each homestead. Stiff penalties were levied for failure to serve. The office had its specific duties, and it was also responsible for carrying out the will of the community, as established by the Easter vestry meeting.
>
> The community had its obligations, including the duty to drop all work when hearing a general "hue and cry" and chase and apprehend robbers, as well as to pay the church tax. The parish, according to the Webbs, was the only popular assembly in England for many centuries other than the House of Commons having the right to impose compulsory taxation. The parish, they write, was less an organ of self-government than one of local obligation. (See Sidney and Beatrice Webb, *The Parish and the County* (1908).)
>
> When the new world opened up for settlement, the parish system became the model for the development of the New England town. Although the first experiments in governance

began with the creation of a weekly town meeting at which the critical decisions of managing the town would be made by the electorate as a whole, selectpersons were soon chosen to do the administrative work of the town, leaving the larger policy decisions to an annual town meeting.

"The selectpersons thus represented a culmination of leadership and publicity – they were (as they still remain) the 'first men' of the community, held to an exacting responsibility that only the public criticism of neighbors can compel. A recital of their powers rings with the broad finality of dictatorship in local matters, but the spirit of their service resembles the humblest agent. It is probable that since the Prytaneis of the ancient Athenian Boule there has been no such breadth of authority so confidently granted nor so thoroughly and publicly checked as in the executive services of the early New England town." John Fairfield Sly, *Town Government in Massachusetts (1620-1930)*, 382.

CHAPTER 1
FINDING THE LAW
BASIC LEGAL RESEARCH FOR THE SELECTBOARD MEMBER

A. SOURCES OF STATE AND FEDERAL LAW

As explained in the Introduction, your authority as a selectboard member is derived solely from State law. Therefore, it is not only important that you act within the law, but also know when you are authorized to act. While this handbook is a useful tool for learning about your authority and Vermont municipal law in general, it is not the final word. Often it may be necessary to consult with the original source.

Sources of state law include the written laws passed by the Legislature (statutes), case law (the set of legal principles developed and explained by the Vermont Supreme Court in its written opinions), and the Vermont Constitution. But this is not the end of the story. Other laws, both federal and state, often impact the operation of local government. Such laws include, for example, administrative regulations promulgated by federal or state agencies, federal statutes and case law, and the United States Constitution.

B. VERMONT STATUTES ANNOTATED

Most legal research on a municipal issue starts with Vermont Statutes Annotated. This hardbound compilation of state statutes is arranged by title and section. A citation to 24 V.S.A. § 2431, refers to section 2431 of title 24 of Vermont Statute Annotated. Bound copies of the statutes (the "green books") are typically maintained at the town clerk's office and in public libraries. An electronic version of the state statutes is also maintained by the Legislature at http://www.leg.state.vt.us/statutes/statutes2.htm.

To aid researchers, VLCT publishes a Municipal Index to Laws Affecting Local Government. The topical index is especially helpful for those using the Legislature's electronic version of the statutes, because the electronic version has no index or directory. To obtain a copy of the Index, call (800) 649-7915 or find it online at http://www.vlct.org.

C. SUPPLEMENTS TO VERMONT STATUTES ANNOTATED

When consulting the statutes, your research is not complete until the most current version of the law is found. In order to find the most current version of a statute, one should review the same section in the annual supplement, commonly called the "pocket part." The annual supplement is typically a paper pamphlet, located at the rear of the hardbound book. Sometimes supplements are printed in separate softbound booklets. The Legislature's electronic version of the statutes is updated regularly, obviating the need for a supplement. There is no electronic corollary to the published paper supplement to the hardbound versions.

D. RECENT LEGISLATION

If there is nothing in the supplement under the title and section number at issue, then the hardbound version is usually the most current version of the statute. However, from the close of the Legislature's annual session (usually late May or early June) to the publishing of the next

annual supplement (usually January), it is a good practice to check for any new legislation on the issue you are researching. This is true even when using the electronic version of the statutes. The easiest way to do this is to review the Vermont Legislative Bill Tracking System at http://www.leg.state.vt.us/docs/docs2.cfm.

Finding new legislation can be difficult. While the Legislative Bill Tracking System has a keyword search tool, finding a relevant bill may not be possible if one does not know the proper keywords to use. Therefore, we suggest that you also consult the VLCT Legislative Wrap-Up, published annually at the close of each legislative session. To obtain a copy, call the League at (800) 649-7915 or find it online at http://www.vlct.org.

Deciphering the Code: Understanding Legal Citation

The annotations in Vermont Statutes Annotated are written in the following format: *Town of Brookline v. Town of Newfane* (1966) 126 Vt. 179 224 A.2d 908. Here is the key to deciphering the code:

- *Town of Brookline v. Town of Newfane* is the title of the case. The first party listed (Town of Brookline) is the plaintiff - the party that first brought the suit. The second party listed (Town of Newfane) is the defendant – the party that was sued.
- (1966) indicates the year the Supreme Court issued its opinion in the case.
- 126 is the volume number of the series where the court's complete written opinion is published. Vt. stands for Vermont Reports (published by West Publishing), the reporter, or court case series, containing the opinion. 179 is the page number in volume 126, where the case begins.
- 224 is the volume number of another series where the court's complete written opinion is published. A.2d stands for Atlantic Reports Second (a regional compilation of state court cases also published by West Publishing). 908 is the page number in volume 224 of Atlantic Reports Second where the case begins.
- The party that appeals a case to the Supreme Court (the party dissatisfied with the prior decision) may be either the plaintiff or defendant, and, depending on the ultimate disposition of the case, may end up winning (a decision of "reversed" or "vacated and remanded") or losing ("affirmed").

E. STATE CASE LAW

Even when the applicable statute is found, the researcher's task is usually not complete. Below the text of each statute printed in Vermont Statutes Annotated, there often appear, in smaller print, one or more annotations. These annotations are brief summaries (but not quotes) of Vermont Supreme Court cases that interpret the statute. Not every statute has annotations because not every statute has been interpreted by the Supreme Court. The Legislature's electronic version of the statutes does not have any annotations.

Although annotations are helpful in understanding how the statute has been interpreted, a thorough legal researcher will not rely on them completely. The annotations are only case

summaries; they are not actual statements of law. To get the final word, one must review the actual case.

Finding published cases can be difficult. The Vermont Supreme Court publishes its written opinions at http://dol.state.vt.us/WWW_ROOT/000000/HTML/SUPCT.HTML, but the published cases only date back to 1994. For earlier cases, one must either look to a subscription-based online service (e.g., Lexis or Westlaw), Vermont Reports, or Atlantic Reports. We suggest that you first check your local public library. You can also check with the Superior and/or District Court in your county. Those in the Washington County area can visit the Vermont Supreme Court law library in Montpelier. You can also obtain copies of cases from the VLCT Municipal Assistance Center or by calling your municipal attorney.

F. STATE REGULATIONS

Other state laws binding on the town include the regulations passed by state administrative agencies (e.g., Agency of Natural Resources, Agency of Transportation, Agency of Agriculture, Food, and Markets). A complete list of Vermont's administrative agencies is available at http://www.vermont.gov/egovernment/agencylist.html. To get a copy of an agency's regulations, make a request to the agency itself, or visit the agency's website. Most Vermont agencies have published their regulations online.

G. SOURCES OF FEDERAL LAW

Federal law may also influence local action. Federal statutes are published in the United States Code (USC) and can be found at http://www.gpoaccess.gov/uscode/. Federal regulations are published in the Code of Federal Regulations (CFR), available at http://www.access.gpo.gov/nara/cfr/cfr-table-search.html - page1. Most federal agencies also maintain their own websites. Helpful resources for Vermont municipal officials include websites maintained by the Environmental Protection Agency (http://www.epa.gov/), IRS (http://www.irs.gov/), U.S. Forest Service (http://www.fs.fed.us/), and the Department of Labor (http://www.dol.gov/).

For Vermont federal district court opinions and rules, go to the United States District Court's website at http://www.vtd.uscourts.gov/. Opinions of the United States Court of Appeals for the Second Circuit (which covers Vermont, New York, and Connecticut) are available at http://www.ca2.uscourts.gov/.

CHAPTER 2
THE SELECTBOARD

A. QUALIFICATIONS

Being a selectboard member is undoubtedly one of more difficult jobs in the State of Vermont. Notwithstanding its challenges, the qualifications for the position are pretty simple: The law only requires that a member be a legally qualified voter of the town. 17 V.S.A. § 2646(4). That is, one must be eighteen years of age, have taken the voter's oath, be a citizen of the United States and a resident of the state of Vermont, and registered to vote. 17 V.S.A. § 2121. There is no test or civil service exam to get the job – just the voters' confidence in your ability to get the job done.

Once they have elected a selectboard member to office, the voters must abide by their decision until the next election. There is no provision in the law for removal or recall of a selectboard member. While the scrutiny may be unbearable and the criticism unavoidable, each member is given the opportunity to learn, leeway to make mistakes, and some time to gain experience. Once elected, a member generally must only maintain life, residency, and sanity to retain the office. 24 V.S.A. § 961.

The Penalty For Neglect of Duty

Notwithstanding that there is no provision for removing a local official from office, keep in mind that selectboard members who willfully neglect to perform the express or implied duties imposed upon them by law may be imprisoned for up to one year or fined up to $1,000 or both, 13 V.S.A. § 3006, and town officers who neglect their duties, whether willfully or not, may be fined up to $100. 24 V.S.A. § 902. Vermont courts have found a selectperson personally liable for "ordinary and simple neglect to perform his duties." *State v. Baldwin*, 116 Vt. 112, 70 A.2d 242 (1949).

B. NUMBER OF MEMBERS

How many members does a selectboard have? Like many other aspects of Vermont local government, the answer depends upon where the question is asked. The law provides that each town must have at least three selectboard members, but a town may elect up to two additional selectboard members, if the voters so chose. 17 V.S.A. §§ 2649, 2650(b). The reasons for expanding the selectboard vary, but as a practical matter, Vermont towns have either three- or five-member selectboards. Recognition of the likelihood of perpetual deadlock has made formation of a four-member selectboard rare, if not unknown.

C. ADDING SELECTBOARD MEMBERS

The process for adding selectboard members requires two steps: First, the voters must decide, at an annual or special town meeting, to add positions to the board. 17 V.S.A. § 2650(b). Then, if the voters have approved the additional positions, the newly created vacancies must be filled, either through appointment by the current selectboard members, or by election. 24 V.S.A. § 963. How these two steps are taken will depend, in part, on whether the process for addition has been

initiated by the voters or the selectboard. It will also depend upon the town's use of Australian ballot for public questions and elections.

After the town has voted to create new selectboard positions, the positions remain in effect until the town votes to eliminate them at an annual or special town meeting. 17 V.S.A. § 2650(c). If you are considering the addition of new members to your board, or have received a petition for a warning article on addition of new selectboard members, please feel free to contact VLCT for additional guidance.

D. Selectboard Powers and Liability – Individually versus As a Board

As mentioned in the Introduction, a Vermont selectboard may serve, at various times, legislative, executive, and judicial functions. However, no individual selectboard member is given authority to serve any of these roles alone. Vermont law gives authority to selectboards and not to individual selectboard members. An individual selectperson has no more authority to take action on behalf of a town than any other resident. 1 V.S.A. § 172.

The only exception to this rule involves dogs causing damage to domestic animals. An individual selectboard member may determine the award of up to $20.00 in damage done to domestic animals by dogs. 20 V.S.A. § 3742. An individual selectboard member may also identify such dogs and issue a warrant for their destruction. 20 V.S.A. § 3745.

Likewise, when an action is brought against a selectperson or any appointed or elected municipal official, it is brought in the name of the town, not the individual. 24 V.S.A. § 901(a). The municipality also assumes all reasonable legal fees incurred by an official when the official was acting in the performance of his or her duties and was not acting with malicious intent. 24 V.S.A. § 901(b). The same is true if the selectperson or official brings an action *against* someone else. The town is the party in the suit.

E. Term and Election

How long do selectboard members serve? In towns with a three-member selectboard, the answer is simple: each elected member holds a three-year term. 17 V.S.A. §§ 2646(4), 2649. In those towns with a five-member selectboard, the answer is more complicated. Three members of the selectboard will hold three-year terms, but the remaining two members hold two-year terms or one-year terms. 17 V.S.A. § 2650(b). The length of these remaining members' terms will depend on whether he or she has been elected to a two or one year seat.

Regardless of the number of selectboard members, the election of a selectboard member must be by ballot, either paper ballot, 17 V.S.A. § 2646(4), or Australian ballot if the town has voted to elect its officers by Australian ballot. 17 V.S.A. § 2680(b).

F. Vacancy on the Selectboard

When a selectperson resigns, moves from town, dies or becomes insane, the remaining selectpersons must post notice of this vacancy in at least two public places in town and in and near the town clerk's office within 10 days of the creation of the vacancy. 24 V.S.A. § 961.

When such vacancy occurs, the remaining selectpersons may then call a special town meeting to fill the vacancy, either on their own initiative or by a valid petition, or they may appoint a

person, in writing, to the position until an election is held, either at a special or the next annual town meeting. This appointment is filed with the town clerk and recorded in the town records.

If there are vacancies in a majority of the board of selectpersons at the same time, the vacancies *must* be filled by election at a special town meeting called by the remaining selectpersons for that purpose, and *not* filled with appointments by the remaining selectpersons. 24 V.S.A. §§ 961, 963.

In the event there are no selectpersons in office, the Secretary of State is required to call a special election to fill the vacancies. 24 V.S.A. § 963. If there is a vacancy on the selectboard or in any other elective office because no candidate filed a petition and no one was otherwise elected, a majority of the selectboard may appoint a voter of the municipality to fill that office until the next town meeting. 17 V.S.A. § 2682.

See Chapter 5, *The Selectboard and Town Officials/Employees*, for a more comprehensive explanation of vacancies in regard to other officials.

Handling Resignations. While state law provides that a vacancy is created by resignation, it does not set out what an official must do to resign from office. The law's silence has led to numerous questions, such as whether an oral resignation is sufficient to create a vacancy and whether a resignation must be formally accepted by the selectboard before the vacancy exists.

In the absence of some further guidance from the Legislature, the best policy is to require written resignations from local officials. Verbal resignations are often made in haste, in the heat of the moment, leaving the recipients to ponder whether the resignation was sincere or merely a spontaneous act of immediate and overwhelming frustration. At the very least, written resignations afford a small moment of contemplation and reflection; the act of putting pen to paper may prompt the official to consider the problems before him or her in a different light. From the recipients' perspective, the written resignation will usually remove questions of the official's true intention. We recommend that a local official who is resigning from office do so in writing, stating the effective date of the resignation. The written resignation can then be recorded with the record of the official's oath of office. 24 V.S.A. § 831.

G. THE OATH OF OFFICE

All selectpersons are required to take an oath of office prior to assuming the office. The oath is:

> *You solemnly swear that you will faithfully execute the office of selectperson to the best of your judgment and abilities, according to law. So help you God.*

The oath is given and taken orally; no forms are involved. 12 V.S.A. § 5813. The swearing in must take place before each new term. Usually this is done immediately following the election, upon adjournment of the meeting or at the first meeting of the board. The town clerk must have record of the fact that the oath was taken and must notify the Secretary of State of the names and addresses of the newly elected selectpersons. 24 V.S.A. § 831; 17 V.S.A. § 2665.

H. OFFICIAL BOND

Selectpersons are not required to give a bond to perform their duties but they must require bonds of certain other town and school officials. 24 V.S.A. § 832. (See Chapter 5, *The Selectboard and Town Officials/Employees*, for the bonding of other officers.)

I. COMPENSATION AND BENEFITS

1. **Salary.** The town may vote at its annual meeting to compensate its officials and employees and it may also fix the amount of that compensation. 24 V.S.A. § 932. If the town does not fix the amounts of compensation, the selectboard shall do so, *except* for their own pay, which must be set by the auditors at the time of the annual town audit. If the office of auditor has been eliminated and if the voters do not set the amount of the selectboard members' compensation, the selectboard members must be compensated at the rate at which they were compensated during the immediate preceding year. 24 V.S.A. § 933.

Selectboard Compensation. VLCT's 2004-05 *Vermont Municipal Salaries and Benefits* indicates that there is no link between budget size and selectboard compensation. Annual compensation for selectpersons and trustees in municipalities with less than a $1,000,000 annual budget ranges from $100 to $2,700 per regular board member. In municipalities with more than $1,000,000 annual budget, compensation ranges from $300 to $3,750. Some municipalities provide more compensation to the board chair. Most compensation is in the form of a set annual stipend, but some towns pay on a per-meeting or an hourly basis.

2. **Income tax and Social Security withholding and reporting.** Quite a bit of folklore has developed around this topic. For some reason, a number of towns believe that elected officials are "self-employed" or "consultants" not subject to income tax withholding or Social Security (FICA). They therefore issue 1099 forms with the Internal Revenue Service for compensation paid to selectpersons. The rules show quite clearly that elected officials must be treated as employees and that they are subject to FICA. Section 263.14 of the Social Security rules covering state and local governments states:

   > An officer of a state or political subdivision is an employee by statutory definition. ... Indicative of such status are provisions that the individual has tenure in his position and that he takes an oath of office. Generally, a public officer exercises some part of the sovereign power of the state or political subdivision.

   In the original 1951 agreement by which the State of Vermont and Vermont cities and towns became eligible to be covered by Social Security, "employee" is defined to include "an officer of a political subdivision of the State." If your municipality is covered by Social Security – several small towns still are not – your selectpersons must also be covered. That means two things. First, selectpersons' paychecks must have the FICA tax withheld from their pay, and the town must match that as they do with all employees. Secondly, IRS instructions for preparing W-2 forms clearly indicate that a W-2 must be filed for anyone from whom you withhold income or social security tax.

3. **Workers' Compensation.** Selectpersons are specifically exempted from workers' compensation coverage *except* "while actually engaged in highway maintenance or construction." 21 V.S.A. §§ 601(12)(O)(i), 601(12)(F).

4. **Unemployment Compensation.** Selectpersons are specifically exempted from unemployment compensation coverage. 21 V.S.A. § 1301(6)(C)(vi)(II).

5. **Minimum Wage and Overtime.** Selectpersons are specifically exempted from the Federal Fair Labor Standards Act (FLSA) (Federal Register § 553.11 (a)) and from state overtime provisions. 21 V.S.A. § 384 (b)(6). Although the state statute is not clear on minimum wages, selectpersons probably fall under the exemption for "bona fide executive, administrative or professional capacity" or their relationship with the town is not deemed an "occupation" or "employment" according to the state Department of Labor. 21 V.S.A. § 383 (2)(E).

6. **Vermont Municipal Employee Retirement System (VMERS).** Although not specifically exempted from VMERS, selectpersons would have to work at least 1,040 hours in a year and at least 24 hours per week in order to qualify as an employee under this system. 24 V.S.A. § 5051(10). (See 24 V.S.A. Chapter 125 and Chapter 5 of this handbook for a discussion of VMERS as it applies to town employees generally.)

CHAPTER 3
CONFLICTS OF INTEREST AND INCOMPATIBLE OFFICES

A. INTRODUCTION

> *The proper operation of democratic government requires that public officials be independent, impartial, and responsible to the people; that government decisions and policy be made in proper channels of government structure; that public office not be used for personal gain and that the public have confidence in the integrity of its government.*

While the vast majority of Vermont's local officials have always taken due care to ensure that personal interests did not influence their public decisions, local officers have never been immune from conflict of interest allegations. Elected officials are rightfully seen as occupying a caretaker relationship to the town and worthy of the responsibility of keeping the town's best interests foremost. Yet the very structure of Vermont local government, the breadth of its responsibilities, and the oft-contentious nature of local issues all increase the likelihood that allegations will be leveled against even the most conscientious selectboard member.

Of all the issues facing Vermont towns, none has proven more difficult to address than the allegation that a local official has a conflict of interest. Such allegations touch the core of people's beliefs about local government and bring into question the personal motives of the official. However, it is often very difficult to determine if he or she has a genuine conflict. Concrete measures are few and far between and, for better or worse, the Legislature and Supreme Court have never provided much guidance for resolving local conflict of interest issues.

As a result, the resolution of conflicts of interest has often relied, for the most part, on the moral conscience of the persons involved. Unfortunately, it is both easy to make allegations of unethical conduct and difficult to defend against such accusations. A mere accusation can do significant damage to the reputation of the accused and, at times, an entire board.

Beyond damage to one's reputation, there are other, perhaps more direct reasons to avoid conflicts. For example, conflicts of interest may result in void contracts. Courts in several jurisdictions have held that where a public official enters into a contract, the execution of which may make it possible for the official's personal interest to come into conflict with his or her discharge of a public duty, the contract is void as against public policy, regardless of the good faith of the parties and the reasonableness of the deal. See McQuillan, *Municipal Corporations* § 29.97. As a further remedy for this self-dealing, a court may also require the official to surrender any profit realized as a result of the questionable deal. *Davenport v. Town of Johnson*, 49 Vt. 403 (1877). Conflicts can also result in void quasi-judicial decisions. The Vermont Environmental Court has stated unequivocally that if a development review board (DRB) member with a conflict of interest participates in a DRB decision, the Court can vacate the decision for that reason, and order the matter be reconsidered by the DRB without the participation of that member. *Appeal of Janet Cote*, 257-11-02 Vtec (2003).

Towns often fail to pay attention to conflicts of interest until an allegation is made or an outright crisis has developed. As the leaders of local government, it is incumbent upon the selectboard members to take the lead and develop strategies and tools for addressing conflicts of interest prospectively. They should take appropriate steps to minimize their own conflicts and

appropriately address them when they arise, not only for their own protection and protection of other local officials, but to uphold the public's faith in their local government.

B. IDENTIFYING CONFLICTS OF INTEREST

One of the most difficult aspects of conflicts is determining when they exist. Part of the problem is the breadth of local government's responsibilities. As explained in the Introduction, local government stretches across the three traditional functions of government: legislative, judicial and executive. Conflicts may be viewed in different ways, and different standards may apply, when a local official is acting in each of these various roles. Nonetheless, experience has shown that a local official is likely to have four types of interests that may result in a conflict: direct monetary interest, indirect monetary interest, direct personal interest, and indirect personal interest. In quasi-judicial proceedings, an official must also be conscious of bias and ex-parte communication. The following scenarios are examples of when conflicts of interest might arise in the selectboard's executive, legislative, and executive roles.

1. **Direct monetary interest.** A conflict of interest can be present when a local official acts on a matter affording the official a direct financial gain.

   - **Executive function.** A selectboard is considering acceptance of a new public road. The road is located in a new subdivision proposed by one of the selectboard members. The town's acceptance of the road would relieve the selectboard member of the expense of maintaining it.
   - **Legislative function.** A selectboard is considering adoption of an ordinance setting weight limits on the local highways and bridges. One selectboard member owns a local trucking company that might not be able to use several roads if lower weight limits are imposed.
   - **Judicial function.** A selectboard is considering an application for a highway access permit. The applicant is proposing construction of a convenience store and deli. One selectboard member owns an existing convenience store and gas station on the same road.

   Direct monetary interests are most easily identified and can present clear conflicts in all three of the selectboard's roles.

2. **Indirect monetary interests**. A conflict of interest can be present when a local official acts on a matter that financially benefits one closely tied to the official, such as an employer or family member.

   - **Executive function.** A selectboard is considering bids for a new highway truck. The daughter-in-law of one of the selectboard members is the general manager of one of the two equipment dealerships that has submitted a bid.
   - **Legislative function.** A selectboard is considering a revision to the town's zoning bylaw. The proposed revision would directly limit a selectboard member's brother's ability to expand his existing business.
   - **Judicial function.** A selectboard is considering an application for a liquor license at a new restaurant. One of the selectboard members has been hired by the applicant to manage the new facility.

Indirect monetary interests can be difficult to identify, especially if the member at issue fails to disclose his or her relationship to the party that stands to benefit from the decision. At times, dealing with the family member or close associate of a selectboard member may be in the best interest of the town. However, when that relationship is the only reason, or a major reason for the decision, the arrangement may be detrimental to the town and may present a conflict. The failure to appropriately deal with an indirect monetary interest may lead to an allegation of nepotism or cronyism.

3. **Direct personal interest.** A conflict may be present when a local official acts on a matter that benefits the official in a non-financial way, but in a matter of significant importance.

   - **Executive function.** The town's development review board has denied a permit for a large retail project. The selectboard is considering participation in an appeal to the environmental court as an interested party. One selectboard member has been a vocal proponent of the project and has written an op-ed piece about the project for the local newspaper.
   - **Legislative function.** The selectboard is considering whether to allow snowmobiles on a town road that bisects property owned by a selectboard member.
   - **Judicial function.** A resident has submitted a written complaint of a dog bite. A selectboard member owns the dog in question.

   Direct personal interests can take many forms and, therefore, can be particularly difficult to identify. In the judicial role, a direct personal interest may rise to the level of a bias that prevents a local official from making decisions objectively. However, the same interest may be perfectly acceptable, or even desirable, when the official is acting in an executive or legislative role.

4. **Indirect personal interest.** A conflict may be present when a local official acts on a matter in which the member's judgment may be affected because of a family or personal relationship, or membership in some organization, and a desire to help that person or organization further its own interests.

   - **Executive function.** The selectboard is preparing next year's proposed town budget. A member of the selectboard is also the chief of the town's volunteer fire department. The selectboard member would like the budget to include a line item for purchase of a piece of fire equipment.
   - **Legislative function.** The selectboard is considering revisions to the town's zoning bylaw. Several members of a selectboard member's family have petitioned the proposed revision, which would restrict expansion of several industrial uses in a certain zone. The family members own homes in the zone.
   - **Judicial function.** A selectboard member is sitting on the board of civil authority. The board member's sister is a town lister.

   The concern presented by an indirect personal interest is embodied in the phrase "a person cannot serve two masters." Voters reasonably expect that when a local official is making a decision, he or she will give first consideration to the interest of the town. An official's close affiliation with, or membership in, another organization may result in a division of loyalties.

Failure to address the conflict may result in the perception that the official is using the office to further the interest of that other group.

5. **Close calls.** The foregoing scenarios have been greatly simplified to provide examples of when conflicts of interest might be present. The reality is that conflicts, and potential conflicts, can be much more difficult to identify. Often times, the appearance of a conflict of interest can be more damaging than the conflict itself. Take, for example, a selectboard member who refuses to recuse himself, and votes to approve a roadside mowing contract between himself and the town. While the value of that conflict may be relatively small, the public's perception that the office has been used for private gain may be very costly, not only to the member, but to the entire selectboard. The best advice when trying to identify conflicts is to err on the side of caution, if only for the preservation and protection of the public's confidence in local government.

C. HANDLING CONFLICTS

> *That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community; and that the community hath an indubitable, unalienable, and indefeasible right, to reform or alter government, in such manner as shall be, by that community, judged most conducive to the public weal.*
> *– Chapter I, Article 7, Vermont Constitution*

1. **Transparency and disclosure.** Chapter I, Article 7 of the Vermont Constitution ensures that government be operated for the benefit of all the people and not for the advantage of a single person, family or group. It also reserves to the people the right to reform their government in a manner that is most conducive to the public good.

   Violations of the public trust are most likely to occur when the transparency of local government is obscured. One of the best methods to effect transparency is to create an environment in which the full and frank disclosure of conflicts of interest is supported and encouraged. Selectboards can take the lead in promoting transparency by actively encouraging an environment where all local officials feel free to disclose facts that may lead to an actual or apparent conflict of interest.

   Beyond transparency, disclosure can also be an effective tool for evaluating conflicts. When potential conflicts are disclosed, they can be discussed and evaluated with other local officials. Oftentimes, discussion of the facts surrounding a potential conflict may lead to the conclusion that no conflict actually exists or can be dealt with effectively.

2. **Appropriate recusal.** When a conflict of interest is identified and disclosed, the proper course of action is recusal from participation in the matter, i.e. from discussing, questioning, commenting and voting. While some officials may feel it is sufficient to just refrain from voting, complete recusal acknowledges that the outcome of events and decisions often rests on more than the final vote. A conflicted official should not be allowed to use his or her position to influence others' decisions. Practically speaking, this can mean leaving the room, or at least the table, where the discussion is occurring.

A common mistake is to equate recusal for conflict of interest with a vote to *abstain*. They are entirely separate processes. To *recuse* means "to disqualify … from participation in a decision on grounds such as prejudice or personal involvement." *American Heritage Dictionary*, 1143 (3d ed., 1997). To *abstain* means "to refrain from something by one's own choice." *Id.* at 6. Abstention from voting is used by a board member when he or she has inadequate information on which to judge the merits. This may occur where the member has not had an opportunity to examine all of the evidence or to attend all of the hearings for reasons other than conflict of interest. Recusal, on the other hand, involves complete removal from participation in the discussion and the vote, where a conflict, or the appearance of a conflict, is present.

3. **Remedies.** Can a selectboard force a conflicted local official to recuse himself when the member has a conflict of interest? Absent a local conflict of interest ordinance, the answer is probably not. Local government is not a private organization that can define its own membership and discipline its own members. Just as the Legislature has taken a limited role in defining conflicts, it has also been relatively silent on how to deal with conflicts once they are identified and disclosed. Absent a local conflict of interest ordinance (see below), the most a selectboard might be able to do is register its displeasure with a member's conduct by passing a resolution censuring the member. Even this limited remedy can have its pitfalls. See *LaFlamme v.Essex School District*, 170 Vt. 475 (2000).

D. Local Tools for Preventing and Addressing Conflicts

Many have argued that the best remedy for those officials who engage in conflicts is to vote the offender out of office. However, as explained in Chapter 2, there is no provision in Vermont law for recall of local officials, though some charters provide for it. It can be several years before the expiration of an office. Relying on political remedies is rarely sufficient. VLCT recommends that municipalities avail themselves of one or more of the local tools for addressing conflicts.

1. **Conflict of Interest Ordinance**. In 2000, the Legislature authorized towns to adopt a conflict of interest prohibition for its elected and appointed officials. 24 V.S.A. § 1984. The process for adoption of the prohibition may be initiated by the selectboard or by application of five percent of the town's voters. 17 V.S.A. §§ 2643(a), 2642(a). The prohibition must be adopted by the majority of those present and voting at an annual or special meeting warned for that purpose. 24 V.S.A. § 1984(a). Regardless of where the ordinance initiates, it must contain the following elements:

   - A definition of conflict of interest.
   - A list of the elected and appointed officials covered by such prohibition.
   - A method to determine whether a conflict of interest exists.
   - Actions that must be taken if a conflict of interest is determined to exist.
   - A method of enforcement against individuals violating such prohibition. 24 V.S.A. § 1984(a).

   The statute provides a default definition of a conflict of interest:

   > [A] direct personal or pecuniary interest of a public official, or the official's spouse, household member, business associate, employer, or employee, in the outcome of a cause, proceeding, application, or any other matter pending before

> the official or before the agency or public body in which the official holds office or is employed. 'Conflict of interest' does not arise in the case of votes or decisions on matters in which the public official has a personal or pecuniary interest in the outcome, such as in the establishment of a tax rate, that is no greater than that of other persons generally affected by the decision. 24 V.S.A. 1984(b).

While the statute provides a good starting point, towns should remember that they retain the authority to craft their own definitions. VLCT maintains a file of conflict of interest ordinances from around the state. If you are drafting a proposed conflict of interest prohibition and would like to review the work of other towns, please feel free to contact the League for assistance.

2. **Conflict of Interest Policy.** The law also authorizes the selectboard to establish a conflict of interest policy. A policy and an ordinance have a small but significant difference: an ordinance has the force and effect of law. A policy is usually only advisory in nature and affords no direct legal remedy.

   While selectboard policies typically have no bearing on the actions of the town's independently elected officials (e.g., town clerk, listers, auditors), the law expressly provides that a conflict of interest policy adopted by a selectboard will apply to "all elected officials of the town, city, or incorporated village." 24 V.S.A. § 2291(20).

   Please see the Appendices for VLCT's model conflict of interest policy.

3. **Purchasing and Bidding Policies.** Another effective tool available for avoiding conflicts of interest is the purchasing policy. Such policies typically provide procedures for competitive bidding and may prohibit local officials or employees from participating in the bidding process. A copy of VLCT's model bidding policy is located in the Appendices.

4. **Municipal Administrative Procedures Act.** The Vermont Municipal Administrative Procedures Act (MAPA) requires towns that have adopted it to follow certain administrative procedures when conducting contested hearings. 24 V.S.A. § 1201. MAPA is an enabling statute and applies only in those towns where it has been adopted. The law creates procedural rights and duties, with an eye toward affording parties more formal hearings and additional due process protections. 24 V.S.A. § 1202. Though usually adopted and applied in conjunction with zoning hearings, towns may elect to apply MAPA to any other contested hearing held by a local board. 24 V.S.A. § 1201.

   One of the features of MAPA is the conflict of interest provision, which requires local boards to comply with the requirements of the statute proscribing the circumstances under which a judge must be disqualified from hearing a case. 12 V.S.A. § 61(a). This statute prohibits persons from acting in a judicial capacity in which the person has an interest or is related to a party within the fourth degree of consanguinity. 12 V.S.A. § 61(a). Another feature of MAPA is the treatment of ex parte communications. The chair and all board members are expressly prohibited from communicating with any party or the party's representative, while the proceeding is pending. 24 V.S.A. § 1207(a), (b). Any ex parte communication received by the chair or a board member must be disclosed on the record. 12 V.S.A. § 1207(c).

E. STATUTORY REQUIREMENTS

1. **Appropriate Municipal Panels (AMPs)**. Under the 2004 revisions to Vermont's zoning statute, local land use panels (planning commissions conducting zoning review, zoning boards of adjustment, and development review boards) are required to adopt rules of ethics with respect to conflicts of interest. 24 V.S.A. § 4461(a).

2. **Quasi-judicial Proceedings.** Where the Municipal Administrative Procedures Act applies, board members must recuse themselves as would members of the judiciary who are subject to 12 V.S.A. § 61. 24 V.S.A. § 1203. Indeed, as mentioned below, recusal is mandated for members of any body acting in a quasi-judicial proceeding, even in the absence of the Municipal Administrative Procedures Act, since 12 V.S.A. § 61 (a) states that no one shall "act in a judicial capacity … as trier of a cause or matter in which he … is interested… ." 12 V.S.A. § 61(a).

3. **Setting Compensation.** A town may vote at its annual meeting to compensate its local officials. 24 V.S.A. § 932. If the town does not set the compensation, the selectboard may. However, the selectboard may not set its own pay, which must be set by the auditors at the time of the annual town audit. 24 V.S.A. § 933.

4. **Election Officials.** No person may serve as an election official in an election where his or her name appears as a candidate for selectperson on the Australian ballot unless he or she is the only candidate for that office. 17 V.S.A. § 2456. These same prohibitions would apply to village officers as well. 1 V.S.A. § 139.

F. SIGNING ORDERS

Many small towns find themselves in the position of having to employ selectpersons to perform some extra services (e.g. road commissioner or board clerk). Even though there is no statutory prohibition on a selectperson being an employee of a town, selectpersons must be cautious when deciding to hire themselves and when setting compensation for these extra services.

A selectperson should not sign a paycheck or warrant for services that he or she renders. If the payment or salary amount is set by the voters or the auditors, then this conflict is not that critical. 24 V.S.A. § 931. But if the amount is not set by the voters or auditors, it is best to avoid any situation which would even remotely hint of conflict. It is simplest for the selectboard to avoid hiring individual selectpersons to perform services for the towns. However, if a town must hire a selectperson for a task, then a plan or system of bidding should be implemented to insure that unfair influence is not wielded by any selectperson.

G. INCOMPATIBLE OFFICES

> *No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than that the accumulation of all power, legislative, executive, and judiciary, in the same hands, whether of one, a few or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.*
>
> *– James Madison, Federalist Papers, No. 47*

In recognition of the principle that the aggregation of political power may result in the diminishment of citizens' freedoms, the Legislature has prescribed a list of incompatible offices. The general statute concerning incompatible town offices is 17 V.S.A. § 2647. Under that statute, a selectboard member may not hold the offices of auditor, collector of current or delinquent taxes, first constable, lister, town agent, town manager or town treasurer. Likewise, the spouse of a selectboard member or "any person assisting [a selectboard member] in the discharge of their official duties" is not eligible to serve as auditor.

The incompatible offices statute does not apply in a town with 25 or fewer legal voters, but even in those towns "an auditor [or the auditor's spouse] shall not audit his own accounts kept and rendered in some other official capacity." 17 V.S.A. § 2648. It should also be noted that the statute does not prohibit one from running for two incompatible offices. For example, one person may simultaneously run for the office of treasurer and auditor, but if elected to both positions, must resign from one office before commencing duties in the other.

Finally, while the incompatible office statute does not mention romantic co-habitants or civil union partners, the intimacy of such relationships would necessarily imply that the same prohibitions apply to these relationships as well.

A Chart of Incompatible Offices is located in the Appendices.

H. NEPOTISM

A word about nepotism is also warranted. Nepotism may occur when town officers appoint their relatives to positions in town government. At times, the relative may be well qualified or even *the* most qualified person, and appointment is appropriate and in the best interest of the town. This is especially true in small towns. Nepotism, however, occurs when the relationship is the only reason or a major reason for the appointment. Such an appointment is not in the best interest of the town and may be detrimental to the town.

I. CRIMINAL OFFENSES

1. **Kickbacks.** Under Vermont *criminal* law, public officials or employees who solicit or accept gifts, gratuities or promises of such with the understanding that the official or employee will be influenced in any matter within his or her official capacity (i.e., kickbacks) may be fined or imprisoned. Possible penalties include fines of up to $10,000 and prison terms of up to five years, depending on the value of the gift or benefit. 13 V.S.A. §§ 1106, 1107.
2. **False Claims.** State law makes it illegal for municipal officials to make any false claims to defraud a municipality. Guilt may result in a fine of up to $10,000 and/or a prison term of up to five years. 13 V.S.A. § 3016.

J. CONCLUSION – CONFLICTS OF INTEREST IN A NUTSHELL

Many of Vermont's municipalities find it difficult to appoint and elect boards and commissions that do not include people with extensive business and family ties to their community. While conflicts cannot always be avoided, they can, and should, be managed. Here are some final tips to remember:

- Conflicts can have significant legal and personal consequences. Mere allegations of conflicts of interest can cause damage to reputations and undermine public confidence in local government.
- Disclosure of potential conflicts effectuates transparency and affords opportunities for discussion and evaluation of potential conflicts.
- When a conflict is identified and disclosed, the local official should recuse himself from participation in the matter under consideration.
- Municipalities should take a proactive approach to conflicts and avail themselves of all tools for dealing with conflicts, including conflict ordinances, conflict policies, nepotism policies and bidding policies.
- Remember to check State law. State statutes often have specific provisions to limit conflicts of interest or to prohibit one person from holding two offices simultaneously.
- In some extreme instances, conflicts of interest can rise to the level of criminal offenses.

CHAPTER 4
SELECTBOARD MEETINGS

A. THE OPEN MEETING LAW

As discussed in Chapter 3, transparency is an essential element of democratic government. In Vermont, the foundation of this transparency is the state's open meeting law. 1 V.S.A. §§ 310-314. The open meeting law implements the command of Chapter I, Article 6 of the Vermont Constitution that officers of government are "trustees and servants" of the people and are "at all times, in a legal way, accountable to them."

All selectboard meetings, with some very limited exceptions discussed below, are subject to Vermont's open meeting law. 1 V.S.A. §§ 310(3), 312. In a nutshell, the open meeting law requires that all meetings of a public body be open to the public. No resolution, rule, regulation, appointment, or formal action undertaken by a selectboard will be binding unless made at an open meeting. 1 V.S.A. § 312(a). See the Appendices for a copy of the law.

1. Notice. The open meeting law recognizes three types of meetings and prescribes specific notice requirements for each.

a. Regular Meetings. Regularly scheduled selectboard meetings do not require a specific notice for each meeting. As explained below, a resolution adopted at the organizational meeting of the board setting the day, time and place of all regular meetings for the ensuing year will suffice as notification. 1 V.S.A. § 312(c)(1).

The First Selectboard Meeting.

Forthwith after the new selectboard members have been elected and taken the oath of office, they must meet to organize and elect a chairperson. If the newly organized board so chooses, it may also elect one of its members as its clerk. Certificates of the election of the chairperson and clerk must be filed with the town clerk. 24 V.S.A. § 871.

This meeting is also a good time to set the board's regular meeting time. The time and frequency of selectboard meetings vary from town to town. Some boards meet twice a month, others once a month. Usually the meetings are on a specific day, for example, the second Tuesday of each month. It is recommended that the board adopt a resolution establishing the date, time and place of all regular meetings for the year. The resolution should be permanently posted in the town office. This will suffice as notice of all regular board meetings under the open meeting law. 1 V.S.A. § 312(c)(1).

b. Special Meetings. Special meetings require specific notice. The time, place and purpose of a special meeting must be publicly announced, at least 24 hours before the meeting. The notices must be posted in or near the town clerk's office and in at least two other public places in town. Also, unless waived previously by the board members, notice must be given orally or in writing to each member of the board. 1 V.S.A. § 312(c)(2). Any editor, publisher or news director of any newspaper or radio or television station serving the area that requests notification of special meetings must be notified. 1 V.S.A. § 312(c)(5).

c. **Emergency Meetings.** Emergency meetings may be held by the selectboard without public announcement, meaning no notice posting or member notification is necessary. However, some sort of notice must be made as soon as possible before an emergency meeting. The law specifically provides that emergency meetings may be held *only* when it is necessary to respond to an unforeseen occurrence or condition that needs the immediate attention of the board. 1 V.S.A. § 312(c)(3).

2. **Agendas.** While there is no direct reference to meeting agendas in the open meeting law, there is a provision in the law that requires that the agenda for a special or regular meeting be made available to the news media or concerned persons prior to the meeting upon specific request. 1 V.S.A. § 312(d). The practical implication of this provision is that an agenda should be prepared for every regular and special selectboard meeting.

   a. **Content.** While the open meeting law does not specify what must be contained in a meeting agenda, the Vermont Supreme Court has routinely interpreted the open meeting law with an eye toward making information available to the public. It can be inferred from the few cases that have explored the open meeting law that a vague or inaccurate agenda will not pass muster. An agenda should be crafted to give the public actual notice of the matters to be considered at the meeting.

   b. **Preparation.** In most towns, one person (usually the board chair, the board assistant, town manager or the town clerk) will take on the responsibility for drafting the selectboard meeting agenda. While an informal approach works in most cases, problems may arise when there is a dispute regarding the content of the agenda and no one is sure who has the final authority to determine the agenda's content. The best way to avoid this conflict is for the selectboard to specify, as part of its adopted rules of procedure, who will craft the agenda, how the content will be determined and who will have final say over the content.

   c. **Posting.** There is no legal requirement that a meeting agenda be posted or published, as the law merely states that the an agenda "shall be made available to the news media or concerned persons prior to the meeting upon specific request." 1 V.S.A. § 312(d). Notwithstanding the strictures of the law, most towns will post a copy of each selectboard meeting agenda in one or more public places in town.

   d. **Following the agenda.** When considering a deviation from the agenda, the board must balance two competing interests: the public's right to notice and the board's ability to effectively deal with emerging issues in a timely manner. When a selectboard engages in extensive discussion of issues not included on the agenda or takes binding action on matters not included in the agenda, it does so with the risk that the public trust, if not the law, will be violated. Agenda items such as "other business" or "public comment," while necessary, should be used sparingly and not as cover to avoid public scrutiny on difficult or controversial issues. Often the person responsible for the agenda will present the agenda to the board as a draft at the beginning to the meeting. The members of the board can then suggest additions to the draft that will be approved by the entire board.

SELECTBOARD, TOWN OF _____

March 31, 2006

REGULAR MEETING AGENDA

EVENT	TIME
1. Call to order.	6:15
2. Introduction of those present by chairperson.	6:16
3. Reading (optional) and approval of minutes from previous meeting.	6:18
4. Appearances by local citizens and visitors.	6:20
5. Announcements (could include times and places of upcoming meetings and events).	6:30
6. Reports.	6:40
• from commissions/boards (such as recreation commission).	
• from selectpersons responsible for certain activities on an on-going basis.	
7. Old or unfinished business.	6:50
• list specific items left unfinished from previous meetings that will be addressed at this meeting.	
8. New Business.	7:00
• list specific items of business not previously considered at other meetings that will be addressed at this meeting.	
9. Review of bills and signing of selectboard's orders.	7:15
10. Adjourn.	7:30

3. **Minutes.** The open meeting law requires that minutes be taken at all public meetings. 1 V.S.A. § 312(b)(1). The minutes must cover all topics and motions discussed at the meeting and provide a true reflection of the business transacted. At a minimum, minutes must include the following information:

   - The names of all board members present and all other active participants in the meeting.
   - All motions, proposals and resolutions made, offered and considered, and the disposition of each.
   - The results of any votes, with a record of the individual vote of each member if a roll call is taken.

   Minutes are considered public records, and must be kept by the town clerk. 1 V.S.A. § 312(b)(2). The minutes must be available for inspection by anyone five days from the date of the meeting and may be purchased for the cost of copying. 1 V.S.A. § 312(b)(2).

   A Practical Problem. While the law requires that selectboard meeting minutes be made available to the public within five days of the date of the meeting, the reality is that most selectboards meet only biweekly. In most circumstances, final selectboard minutes cannot be made available in time to meet the law's requirement. The solution is to prepare draft

minutes and make them available within the statutory timeframe. These draft minutes should be clearly marked "draft," "unapproved," "subject to approval" or with some similar appropriate term. At the next selectboard meeting, the minutes can be reviewed and approved, then made available for inspection and copying.

4. **Committees and Subcommittees.** Occasionally, a selectboard will appoint some of its members or a group of citizens to study and make recommendations on a particular issue. All such committees and subcommittees are subject to the open meeting law and must follow all of its notice and record keeping requirements. 1 V.S.A. § 310(3).

5. **Adjourned Meetings.** Normally, when a meeting is adjourned, the meeting is over and the board will meet at the next regularly scheduled time. However, a meeting can be adjourned "to a time and place certain" to attend to some unfinished business without being re-warned. Note that when a meeting is adjourned "to a time and place certain," only that business which is carried forward from the adjourned meeting may be dealt with. Any new business must be conducted at a new, properly warned meeting. 1 V.S.A. § 312(4).

6. **Cancellation of Meetings.** Nothing in the law provides a procedure for canceling a meeting. It would seem best to provide as much notice in as many places as possible, but what can be done in the midst of a January blizzard? In this electronic age, radio announcements, cell phones and e-mail may be very useful.

7. **Penalties.** The penalty for knowingly or intentionally violating any provision of the open meeting law is an individual fine of up to $500.00. 1 V.S.A.§ 314(a). Also, the attorney general or any person aggrieved by a violation of the open meeting law may apply to the superior court for relief. These cases take precedence on the court docket and will be heard "at the earliest practicable date." 1 V.S.A. § 314(b). In other words, it is wise to follow the law carefully and to assume that the court will interpret the law in favor of open meetings whenever possible.

Smile – You're on Candid Camera! Tape recording of selectboard meetings has been a source of tension between citizens and selectboards for years. Now, with the expansion of public access cable television, more selectboards find themselves smiling (if somewhat reluctantly) for the television camera. While Vermont law is silent on the issue, it is generally recognized that a selectboard has no authority to exclude tape recorders or video cameras from its meetings. The only exception would be when the board is conducting deliberations in the context of a quasi-judicial hearing. 1 V.S.A. § 312(e).

The best approach for the reluctant selectboard is to accept tape recorders and video cameras as part of public life, and develop reasonable rules to ensure that recording takes place in a manner that does not interrupt or disturb the meeting. A selectboard should also remember that if the board (or one of its members) records a meeting, the tape is a public record subject to disclosure under the state's public records law. 1 V.S.A. § 316.

B. Open Meeting Law Exceptions

The Legislature has recognized that in certain circumstances private interests may outweigh the public's interest in open meetings. In recognition of these interests, the Legislature has crafted some limited exceptions to the open meeting law. Recognizing the opportunity for abuse that

they might provide, courts have traditionally interpreted these exceptions very narrowly. Selectboards are well advised to take the same approach.

1. **Executive Session.** Executive session is a limited statutory exception to the open meeting law. A selectboard may vote to enter into an executive session at any time during an open meeting when the topic to be discussed meets the criteria in 1 V.S.A. § 313(a). The motion must state the nature of the business to be discussed in executive session, it must pass by a majority of the members present, and the result of that vote must be entered into the minutes. No other matter may be discussed in the session and no binding votes or actions may be taken until the board comes out of the session and is again in open meeting. At the board's discretion, it may ask staff, clerical assistants, legal counsel and "persons who are subjects of the discussion or whose information is needed" to attend the executive session. 1 V.S.A. § 313(a).

   Executive session is not meant to be a way to get around public scrutiny or debate when controversy is brewing. Rather, it is a way to discuss sensitive subjects thoroughly before taking action. An executive session is considered an extreme measure and may only be done under statutorily prescribed circumstances. The Vermont Supreme Court leans very heavily in favor of conducting business in open meeting. *Trombley v. Bellows Falls Union H.S.*, 160 Vt. 101 (1993).

   The only binding action that may be taken in an executive session is related to the securing of real estate options. 1 V.S.A. § 313(a)(2). If a vote or resolution is required or desired on any other topic discussed in an executive session, it must be taken in an open meeting, not in the executive session. Minutes of an executive session are not required. However, if minutes are taken, they do not need to be made public as other minutes are. 1 V.S.A. § 313.

2. **Deliberative Session.** The deliberations of a selectboard, undertaken in conjunction with a quasi-judicial proceeding, are exempt from the open meeting law. 1 V.S.A. § 312(e). A quasi-judicial proceeding is a contested case or one in which the legal rights of one or more persons are adjudicated. Parties have the opportunity to present evidence and to cross-examine witnesses presented by other parties. The result is a written judgment that may be appealed by a party to a higher authority. 1 V.S.A. § 310(5).

   A common example of a quasi-judicial proceeding is the procedure for altering a highway. The selectboard inspects the site and takes testimony at a public hearing. At the end of the process, the selectboard issues a written finding. 19 V.S.A. § 709. Other examples are hearings about vicious dogs, tax appeal hearings, and appeals from health orders.

   Deliberations are defined as weighing, examining and discussing the reasons for and against an act or decision, but the definition expressly excludes the taking of evidence and the arguments of parties. 1 V.S.A. § 310(1). The rationale for this exception is that the board should be allowed to deliberate in an atmosphere that is free from influence by the parties and the public. The written decision issued by a public body in connection with quasi-judicial proceeding need not be adopted at an open meeting if the decision will be a public record. 1 V.S.A. § 312 (f).

3. **Other Exceptions.** There are other exceptions to the open meeting law worthy of discussion. Site inspections for the purpose of assessing damages or making tax assessments or

abatements are exempt from the open meeting law, as is clerical work and work assignments of staff. 1 V.S.A. § 312(g).

It should also be noted that the law provides that "routine day-to-day administrative matters that do not require action by the public body may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered." 1 V.S.A. § 312(g). In some towns, this provision has been interpreted to exempt so-called "work sessions" from the open meeting law. Typically, these work sessions are meetings where issues and subjects are discussed, but no formal action or votes are taken, such as budget planning meetings. Work sessions are not explicitly recognized in the statutes. Accordingly, VLCT recommends that municipalities take a conservative approach to this interpretation. If matters are going to be discussed that might later be the subject of a vote by the board, then those discussions should take place in the context of a duly noticed open meeting. Labeling a meeting a work session in order to avoid the open meeting law requirements is not appropriate.

C. QUORUMS AND BINDING VOTES

Under Vermont law, a majority of the members of a board or commission must be present in order to hold a meeting. 1 V.S.A. § 172. This majority is called a quorum. In the case of a three-member selectboard, two members must be present and in the case of a five-member board, three members must be present in order to convene a meeting.

Quorum Confusion. In order for a board to take a binding vote or action, there must be "the concurrence of a majority of" the total number of members. For example, if there is a five-member board with four members present and they vote 3 to 1 to approve a contract, the contract is accepted and valid because three of the five members of the board concurred. Suppose only three members of the five-member board are present and they vote 2 to 1 to fire an employee. That is not a binding decision because only two members of a five-member board have concurred. 1 V.S.A. § 172.

1. **Use of technology.** In a different technological era, the Vermont Supreme Court held that actual physical presence was necessary in order for a person to be counted as "present" under the quorum statute. However, under subsequent amendments to the open meeting statute, "A meeting may be conducted by audio conference or other electronic means, as long as the [other] provisions of [the open meeting law] are met." 1 V.S.A. § 312(a).

   In order to meet the requirements that the meeting public be given reasonable opportunity to participate, as provided in subsection 312(h), electronic communication must be by something like a speaker phone. Contact by regular phone would probably not meet the statutory requirements.

E-mail and the Unintended Selectboard Meeting

No technology has done more in the last ten years to revolutionize the way we communicate than e-mail. Everyone uses it, including local officials. But there is a downside to e-mail that local officials should be aware of.

Consider, for example, the typical three-member selectboard. One board member has been doing some research about a family of beavers causing flooding of the town baseball field. The board member has found a solution to the problem that seems (at least on its face) to have some merit. Excited by her find, she sends an e-mail to her fellow board members. Thereafter, the three have a brief e-mail exchange on the merits of this solution and decide to give it a try.

So, what is the problem? By failing to give proper notice of this meeting, and failing to provide the public an opportunity to participate by expressing its opinion on the matter, the selectboard has potentially violated the open meeting law.

Recall that the open meeting law defines a meeting as "a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action." 1 V.S.A. § 310(2). The law also provides that a gathering can be conducted "by audio conference *or other electronic means*." 1 V.S.A. § 312(a).

If a quorum of board members is conducting a group e-mail discussion about town business, it is very likely that they are violating the open meeting law. The same principle would apply if the board members were talking on the telephone or chatting at the local convenience store. While the result may seem harsh, the larger goal of maintaining the public trust far outweighs the minor inconvenience of saving the discussion for a properly warned meeting.

2. **Delegation of routine matters.** These quorum and open meeting requirements do not prevent a board from delegating authority to handle a particular task to one member of the board, so long as the decision to delegate authority is *properly made by a majority of the board at an open meeting*. For example, the board may vote to authorize one member to sign payroll orders on behalf of the board. 24 V.S.A. § 1623. This is commonly done in towns where payroll must be issued weekly and the board meets monthly.

D. CONDUCT OF THE MEETING

1. **Introduction.** As noted in Chapter 2, a selectboard must act as a body and has authority only when acting as a whole. 1 V.S.A. § 172. This means that a selectperson may not act alone unless the board as a whole (or majority) has voted on the issue. Selectpersons acting on their own without the concurrence of the other selectpersons have no authority. *Town of Wolcott v. Behrend*, 147 Vt. 453, 456-7 (1986) (Single selectman could not approve cutting of timber on town property.). The selectboard accomplishes its business through *meetings*. The most effective selectboards are those that make the best use of their meeting time and resources.

2. **Role of the Chair.** At its first organizational meeting, the selectboard must elect a chair. 24 V.S.A. § 871. Often times, the role of board chair is filled by the most senior board member. While experience is important, an effective board chair must be a good leader and have the

ability to move the board toward its goals, assisting the board in making the best use of its time and resources. Seniority should not be the only factor in choosing a chair.

The chairperson typically has additional duties beyond the coordination and the running of board meetings, including calling special and emergency meetings, acting as spokesperson for the board and coordinating contact with the news media. The selectboard chair also has some statutory duties and rights not held by other members of the board. The chair must keep, or cause to be kept, a record of all orders drawn by the board showing the number, date, to whom payable, for what purpose and the amount. 24 V.S.A. § 1622. The board chair, and vice chair, also have the authority to sign written decisions and orders approved by the board. 24 V.S.A. § 1141.

While the selectboard chair has additional responsibilities, being chair does not take away a board member's rights. The chair may curb his or her participation in board discussions to allow others the opportunity to express their thoughts, but the chair can still have, and express, an opinion. The successful chair makes sure all members have had an opportunity to speak on an issue, and fulfills the board's legal duty to afford the public reasonable opportunity for participation and comment. 1 V.S.A. § 312(h).

Helpful Tips for the Chair Under Fire.

The time comes in every selectboard chair's tenure: A particularly difficult issue has come up for discussion. Passions are high, the public is engaged and the press has arrived. It's neighbor versus neighbor, and everyone wants to be heard. Welcome to the hot seat of local government. As the selectboard chair, you have a statutory obligation to keep order and the responsibility to facilitate appropriate public participation. Here are some tips to keep the difficult meeting on track:

- Adopt rules of procedure. Make copies of the rules available for everyone and politely remind participants that the rules will be observed and enforced.
- Prepare an opening statement acknowledging that the issue up for discussion is controversial and that, while passions may run high, all participants will still be neighbors at the end of the meeting. Mutual respect should be the order of the day.
- Remind everyone that the purpose of the meeting is the civil discussion of the matter under consideration. The focus should be issues and not personalities. Personal comments are not welcome and personal attacks will not be allowed.
- Use the pronoun "we" instead of "you" or "I." Emphasize the collaborative nature of the discussion.
- Be aware of the physical indications of escalating tensions, like raised eyebrows and raised voices. Use humor and humility to bring perspective.
- Summarize what you are hearing and reframe issue as the conversation progresses. Point out areas of common ground and points of divergence that might warrant further discussion.
- Politely, but firmly, enforce the rules.

3. **Rules of Procedure.** Selectboard meetings are not required to be conducted under any specific set of rules or procedures. However, it is strongly recommended that meetings be conducted by some set of procedural rules. A lack of rules can lead to logistical problems, confusion and charges of inconsistent or arbitrary decisions. People dislike what appears to them as the board making up the rules as it goes along. Therefore, if the board is using its own set of rules and procedures, it should have them written and close at hand at each meeting. See the Appendices for VLCT's Model Rules of Procedure.

CHAPTER 5
THE SELECTBOARD AND TOWN OFFICIALS/EMPLOYEES

A. INTRODUCTION

The selectboard of a town has general supervisory powers over all town matters, and must "cause to be performed all duties required of towns and town school districts not committed by law to the care of any particular officer." 24 V.S.A. § 872. Accordingly, the selectboard has expansive authority over local governmental affairs, which permits it to insure that the business of the town runs smoothly.

The selectboard's powers are limited by statute insofar as selectpersons are prevented from acting in areas reserved for other officers. 24 V.S.A. § 872. This has been interpreted by the Vermont Supreme Court to mean that selectpersons cannot tell other elected officials how to do their jobs unless specifically instructed by the statutes. For example, absent specific statutory authority, selectpersons may not prescribe methods by which the town clerk must keep the town records. *Bennington v. Booth*, 101 Vt. 24 (1927).

Although the selectboard may not interfere with the duties "committed by law" to the care of another officer, the board has some specific statutory authority over other town officers. For example, it might be required to set the compensation of the town officers, fill vacancies in town offices, appoint some officials and establish the amounts of the bonds required to be provided by each officer. We will discuss the relationship between selectpersons and other town officers in more detail in the following paragraphs.

B. SETTING COMPENSATION

The selectboard is responsible for setting the compensation of town officers, elected and appointed, and employees, unless the town voters have done so at the annual town meeting. 24 V.S.A. §§ 932, 933. However, if the town votes to compensate (or not compensate) a town officer for his or her official service at an annual meeting, the voters' decision is binding on the selectboard. 24 V.S.A. § 933. If the town has not set the compensation for members of the selectboard at the annual town meeting, the auditors must fix it at the time of the annual town audit.

Note that the town is only authorized to set compensation at an annual meeting, and if it fails to do so, the selectboard must set the compensation until the next annual meeting.

C. SETTING BONDS

Before certain town officers begin performing their duties, the selectboard must, by law, require each of them to give a bond to the town and/or school district conditioned on the faithful performance of his or her duties. 24 V.S.A. §§ 832, 1234. The officers who must give bond are the school directors, constable, road commissioner, collector of taxes, treasurer, assistant treasurer, clerk (24 V.S.A. § 832) and manager (24 V.S.A. § 1234). However, the municipality must pay for all bonds required of these officers. 24 V.S.A. § 835.

The purpose of the bonding requirement is to protect the municipality from the possible wrongdoing or misappropriation of its officers. Accordingly, the selectboard often sets the bonds

at the amount of money the particular officer is likely to have control over at any particular time. However, the board is not limited by statute as to the amounts in which the bonds must be set, so that it may exercise its discretion and set the bonds as low as zero dollars. By law, the selectboard also sets the surety on the bond and is not limited in this regard, except that it may not allow as surety another officer of the same municipality. 24 V.S.A. § 832.

If an officer fails to provide the required bond ten days after he or she is requested to do so, that office must be deemed vacant. 24 V.S.A. § 832. Note that if the selectboard fails to require bond, it is open to question whether the officer is legally serving even though he or she has been properly elected to office. Under these circumstances, however, a court will consider such person a *de facto* officer, and he or she may continue to act as officer until the office is "vacated" by the selectboard on the officer's refusal to execute a bond to its satisfaction.

The selectboard may, at any time, require a particular officer to provide an additional bond, if it considers the current bond to be insufficient. 24 V.S.A. § 832. When a bond is set by the selectboard and provided by an officer, the board must file such bond in the office of the town clerk for recording in a book kept for that purpose. 24 V.S.A. § 832.

Selectboards have sometimes set an extremely high bond in an effort to remove a town official from office. This is not wise or practical, however, since the town is responsible for paying for the bond. 24 V.S.A. § 835.

D. FILLING VACANCIES

When a vacancy occurs in any town office, the selectboard has the authority to fill the vacancy forthwith on a temporary basis until an annual or special town meeting is held at which the vacancy is filled. 24 V.S.A. §§ 962, 963. An office becomes vacant if the town officer resigns, is removed from office, dies, becomes insane, or moves out of the town in which he or she serves. 24 V.S.A. § 961.

When an office becomes vacant, the selectboard must alert the public of this vacancy by posting notice of the vacancy in at least two public places in the town and in and near the town clerk's office within ten days of the vacancy. 24 V.S.A. § 961. The selectboard may fill the position on a temporary basis prior to such posting. The voters may petition the selectboard for a special election to fill the position. If the voters do not do so, or do so without the required number of signatures (5% of the electorate), the selectboard's temporary appointment may remain in office until the next annual meeting or until another special town meeting is called for some other purpose. If a majority of the selectboard is vacant at the same time, such vacancies must be filled by a special town meeting called for that purpose by the remaining selectpersons, or by the secretary of state if there are no selectpersons in office. 24 V.S.A. § 963.

E. APPOINTMENT OF OFFICIALS

The selectboard has been given express authority to appoint various local officials. First, after the election and qualification of the board, board members elect from their number a chairperson. They may also elect a clerk of the board. 24 V.S.A. § 871. The selectpersons must also appoint from among the legally qualified voters of the town: three fence viewers; a poundkeeper for each animal pound in the town; one or more inspectors of lumber, shingles and wood; one or more weighers of coal; and a tree warden (the poundkeeper does not have to be a town resident so long

as he or she consents to the appointment). 24 V.S.A. § 871. The weigher of coal must not be directly or indirectly interested in the sale of coal. 24 V.S.A. § 1032.

A municipality may have a zoning board of adjustment and a planning commission or it may have a development review board and a planning commission. 24 V.S.A. § 4460. When a municipality has adopted zoning or subdivision bylaws, the planning commission must appoint a zoning administrator with the approval of the selectboard. 24 V.S.A. § 4448.

The selectboard must also appoint a three to nine member zoning board of adjustment or a five to nine member development review board. 24 V.S.A. § 4460. The zoning board of adjustment hears all appeals from decisions of the zoning administrator. 24 V.S.A. § 4465. Where the legislative body of the town decides to appoint a development review board, that board replaces the zoning board of adjustment and takes over all of the development review functions previously delegated to the planning commission and the planning commission continues to perform its other functions of planning and bylaw development. 24 V.S.A. § 4460. Planning commission members may be appointed by the selectboard or elected for a term determined by the voters. 24 V.S.A. § 4323. When they are appointed, they may also be removed by unanimous action of the board. When they are elected, the board may not remove them. However, if a vacancy on the planning commission occurs, the selectboard may appoint a replacement to serve until the next election. 24 V.S.A. § 4323. The municipal legislative body also has the authority to appoint a representative to the regional planning commission and to remove such person by a majority vote. 24 V.S.A. § 4343. Finally, after a town adopts any building codes, rules or regulations, the selectboard appoints a building inspector and may appoint a deputy building inspector. These inspectors must be competent and disinterested people with experience in various types of building construction so that they can enforce the regulations. 24 V.S.A. § 3102.

If the town has not voted to elect road and water commissioners, the selectboard may appoint one or two road commissioners and three water commissioners (unless there is no municipal water system). 17 V.S.A. § 2651. If the town has not elected an agent to convey real estate owned by a town or town school district, the selectboard may appoint such an agent and have the certificate of appointment recorded by the town clerk. 24 V.S.A. § 1061. A town may also authorize the selectboard to appoint an inspector of wiring (24 V.S.A. § 1033), a town energy coordinator (24 V.S.A. § 1131), and a town manager (24 V.S.A. §§ 1241-1243).

On or before April 15 of each year, and whenever there is a vacancy, the selectboard must appoint a town service officer. The selectboard must notify the commissioner of social welfare, who will give him or her a certificate of appointment and a contract for compensation. If the selectboard fails to appoint a town service officer, the commissioner may do so. 33 V.S.A. § 2102. Similarly, the forest, parks, and recreation commissioner must appoint, and may remove for cause, a town forest fire warden with the approval of the selectboard. 10 V.S.A. § 2641. Finally, the selectboard must establish a local organization for emergency management and appoint a chair for it in accordance with the state emergency management program. 20 V.S.A. § 6.

F. RECALL OF ELECTED OFFICIALS

There is no Vermont statute that provides generally for the recall of elected local officials. Some municipal charters do, however, contain provisions for recall. Absent such a provision, elected officials may not be recalled.

G. REMOVAL OF APPOINTED OFFICIALS

There is no statute that gives selectpersons the general authority to remove appointed officials; however, many of the statutes that authorize the selectboard to appoint officials also authorize it to remove that official. For example, the selectboard may remove the town manager for cause by a majority vote of the board. 24 V.S.A. § 1233. The selectboard may also remove the road and water commissioners, if appointed by the selectboard, "for just cause after due notice and hearing." 17 V.S.A. § 2651. The selectboard may remove an appointed planning commission member "at any time by unanimous vote." 24 V.S.A. § 4343. A building inspector may be removed by the selectboard by majority vote. 24 V.S.A. § 3102. Selectboards may only remove a member of a board of adjustment or development review board for cause "upon written charges and after public hearing." 24 V.S.A. § 4460. Absent a specific statute, however, the power of a selectboard to remove an official it appoints is presumed since removal power is incidental to the appointment power.

The selectboard is not generally authorized to remove officers who are not appointed by them. However, the planning commission appoints the administrative officer with the approval of the selectboard, and he or she may only be removed for cause by the selectboard after consultation with the planning commission. 24 V.S.A. § 4448.

H. PERSONNEL POLICIES

In the interest of harmony and efficiency in the workplace, the selectboard may adopt rules relating to personnel administration. The board may establish job classifications and set rules relating to tenure, retirement, pensions, leaves of absence, vacations, holidays, hours of work, group insurance, salaries, layoffs, reinstatement, promotion, demotion, dismissal, transfer, injury, and settlement of disputes and appeals. 24 V.S.A. § 1121(a). Other topics a municipality might consider, and which relate more to employee behavior, include general conduct, attendance/tardiness, appearance and grooming, smoking, employee mail and telephone use, negligence, fighting, insubordination, work performance, sexual harassment, conflict of interest, confidentiality, substance abuse (drug/alcohol), criminal activity and falsifications of records. Note that state law requires employers to have policies on smoking and sexual harassment. Municipalities accepting federal funds must have a substance abuse policy.

Rules adopted by the selectboard may apply to any or all employees of a municipality, including the officers and employees of a fire or police department maintained by the municipality (24 V.S.A. § 1121(b)) and the zoning administrative officer (24 V.S.A. § 4448(a)). However, the statute prohibits the personnel rules adopted by the selectboard from being applied to employees of the town school district. 24 V.S.A. § 1121(b).

The adoption of personnel rules is considered an administrative act of the selectboard. Accordingly, they must be adopted by majority vote and are not subject to the statutory provisions ordinarily applicable to the selectboard's promulgation of ordinances and rules. 24 V.S.A. § 1122; *Martin v. Town of Springfield*, 141 Vt. 554 (1982).

For more information on this topic, please see the VLCT Municipal Assistance Center's *Municipal Employment Law Handbook* (2004).

I. THE TOWN MANAGER

When the town elects to have a manager, the selectboard may appoint a general town manager to supervise the affairs of the town. 24 V.S.A. §§ 1232, 1233. In order to authorize the selectboard to hire a manager, there must be a vote at an annual or special meeting after 5% of the voters petition the selectboard in writing for an article to be warned to authorize the employment of such a manager. 24 V.S.A. § 1241.

The town manager position is non-political; as such, it must be filled based upon the qualifications of the applicant and without reference to his or her political beliefs. 24 V.S.A. § 1233. In addition, the town manager does not have to be a resident of the town for which he or she is appointed. 24 V.S.A. § 1232. The manager may not be a member of the selectboard since the manager is subject to its direction and supervision. 24 V.S.A. § 1233; 1940-42 Op. Atty. Gen. 269.

The manager holds office at the will of the selectboard and may be removed for cause by a majority vote of the board. 24 V.S.A. § 1233. The manager may also be removed if the town revokes the selectboard's power to hire such a manager by majority vote at an annual or special meeting, provided that a proper article is inserted in the warning of such meeting. 24 V.S.A. § 1242.

Compensation of the manager may be fixed by the selectboard, unless otherwise specifically voted by the town. 24 V.S.A. § 1239. The manager must swear to the faithful performance of his or her duties and give a bond to the town before beginning the job, the amount of which, along with other required sureties, is established by the selectboard. 24 V.S.A. § 1234. The town itself pays for the bond. 24 V.S.A. § 835.

The manager is given general supervisory powers over the affairs of the town and is considered the administrative head of all departments of town government. 24 V.S.A. § 1235. Specifically, the manager's duty is to perform all functions required of the town and town school district not committed to the care of any particular officer and to assist the selectboard in all matters reserved for its sole authority. (See enumerated functions in 24 V.S.A. § 1236(2).) The town manager also performs all other duties conferred by law on the selectboard. 24 V.S.A. 1236. For example, the manager acts as the general purchasing agent for the town, is in charge of all public town buildings, does all the accounting for all the departments of the town and town school districts (if so requested by the school board), and supervises and expends special town appropriations. 24 V.S.A. § 1236(3), (4), (7), and (8). In order to perform his or her duties, the town manager must be allowed access to all town books and papers. 24 V.S.A. § 1237.

The manager may perform the duties of road commissioner and/or tax collector if the town so votes; has charge, control, and supervision over the police and fire departments; and may appoint and remove officers and fix their salaries. (For a complete list of the specific duties of a town manager consult 24 V.S.A. § 1236.) Note that the town manager may exercise his or her authority independently of the selectboard and may follow his or her own judgment, even when the selectboard disagrees. If the selectboard is not satisfied with the manager's performance, however, it may remove the manager from office for cause. 24 V.S.A. § 1233.

Finally, a town manager may be employed by two or more towns when those towns have adopted a resolution calling for the appointment of a town manager and have voted to form a union with the other towns for the purpose of sharing a manager. 24 V.S.A. § 1232.

J. TOWN ATTORNEY AND TOWN AGENT

Most selectboards in Vermont employ an attorney to advise them on matters involving the governance of the town. However, no specific statute authorizes the selectboard to hire a town attorney; the power to do so is implied from the selectboard's general duty to run the business of the town. 24 V.S.A. § 872.

The town agent plays a limited role in town government. Although statute provides that an agent to prosecute and defend suits must be elected, no statute provides the agent with any independent authority to act. In fact, case law makes it clear that the town agent has no authority to originate suits in favor of the town or to settle or compromise suits in which the town has a interest, but that the agent's duty consists merely of assisting when litigation is in progress. *Cabot v. Britt*, 36 Vt. 349 (1863); *Clay v. Wright*, 44 Vt. 538 (1872). In addition, the fact that a town agent is elected does not remove the authority of the selectboard to hire an attorney to represent the town, to conduct litigation and to settle suits on behalf of the town. Accordingly, many towns do not have active town agents, and those that do often limit the agent's activities to picking an attorney for the town or acting as a liaison between the selectboard and the town attorney in particular matters.

K. SPECIFIC OFFICIALS

1. **Town Clerk – Indices.** The town clerk in each town is required to keep various general indices. (For specifics on these indices, see the *Handbook for Vermont Municipal Clerks*.) These indices may be kept by a card index system with the consent and approval of the selectboard. This card index must provide full and complete information as required by 24 V.S.A. § 1153.
2. **Absence of Moderator.** In the absence of a moderator at an annual or special town meeting, a selectperson must preside over the meeting until a moderator *pro tempore* is chosen. In towns that elect their officials from the floor, the election of the moderator is usually the first order of business if warned as such. 17 V.S.A. § 2657.

L. EMPLOYMENT OF CHILDREN

Municipalities provide some kinds of work that lend themselves to being done by seasonal or part-time workers. Younger workers may be hired for some of these jobs. However, municipal officials must be aware of state and federal laws governing child labor. Where those laws differ, the stricter will apply. Penalties for violation of child labor laws are hefty – as much as $10,000 per violation of federal law and fines and possible jail time for violations of state law.

The State of Vermont recommends that employers obtain a copy of birth certificates for employees under 19 years of age to avoid accidental, illegal employment. In addition, employees under the age of 16 may need an employment certificate from the Commissioner of the Department of Labor. 21 V.S.A. §§ 431-434. There are time and hour restrictions that vary by age and time of year. For example, children under 16 are limited to three hours per day on school days and eight hours on non-school days. But, a minor 16 to 18 years of age may work up to nine hours per day and 50 hours per week.

Age may also dictate the type of work a child may perform. When hiring, keep in mind that 14 and 15 year olds may not operate power equipment (including mowers or shears), work with ladders, hoists, chemicals, boilers, choppers/slicers, etc. All persons under 18 years of age are prohibited from working with explosives, doing roofing or excavation work and from operating many power-driven machines.

The U.S. Department of Labor advises employers to be aware of:

- when employment certificates are required;
- need for proof of employee's age;
- *permitted* occupations for 14 and 15 year olds;
- *prohibited* occupations for 14 and 15 year olds; and
- *prohibited* hazardous occupations for *all* minors under age 18.

This merely hits a few high spots of child labor law. More detailed information is available from the Vermont Department of Labor, (802) 828-4000, or from the U.S. Department of Labor, Wage and Hour Division, (866) 487-9243. VLCT advises town officials to contact those sources and their insurance carrier before hiring anyone under the age of 18, even as a part-time or seasonal employee.

M. MINIMUM WAGE

Almost all municipal employees are subject to both the federal Fair Labor Standards Act (FLSA) and the state minimum wage laws (21 V.S.A. § 384(a)), so they must be paid the *higher* of the two statutory rates.

Towns get into trouble concerning minimum wage issues with "volunteers" and the definition of employee under FLSA. Elected officials and "personal staff members and officials in policymaking positions who are selected or appointed by the elected public officials" are exempt from the federal minimum wage provisions. 29 CFR § 553.11. Also exempt are executive, administrative and professional employees. 29 CFR § 541.

"Executives" must manage an organization or subdivision or department of an organization, supervise two or more employees, and have the ability to hire and fire or to make recommendation for hiring and firing. "Administrative" personnel must do non-manual work related to management policies or business operations and exercise discretion or judgment. They may also assist an executive or administrative employee, perform only general supervision along specialized lines, or execute specialized assignments under only general supervision. "Professional" employees exempt from the act include teachers and those whose work requires advanced knowledge (e.g., accounting, engineering, law), the exercise of discretion, and which is "intellectual and varied, the output of which cannot be measured in standard units of time."

Employees in municipal recreational programs operating for fewer than seven months of the calendar year (e.g. ice rinks, swimming pools, etc.) are also exempt from the FLSA (Section 13(a)(3) of the Act). However, Vermont's minimum wage law covers these employees, so the municipality must pay them the higher state wage.

Volunteers are not considered employees under the act. 29 CFR § 553.101. Volunteers are those who work "for civic, charitable or humanitarian reasons without promise, expectation, or receipt

of compensation," so long as such services are offered without coercion and unless the individual is doing the same job for the same employer.

Volunteers may be paid expenses, reasonable benefits, and/or a nominal fee and not lose their volunteer status. 29 CFR § 553.106. A nominal fee cannot be tied to productivity but could include a "per call" payment or a nominal monthly or annual stipend.

Additional information is available from the Wage and Hour Division of the Vermont Department of Labor, http://labor.vermont.gov (802-828-2157) or the U.S. Department of Labor, Wage and Hour Division, http://www.dol.gov (866-487-9243).

N. OVERTIME COMPENSATION

Municipalities are exempt from the state law requiring time and one-half compensation for work over 40 hours per week. 21 V.S.A. § 384(b)(6). However, the overtime provisions of the federal FLSA still apply.

The general rule is that employees must be compensated at one and one-half times their regular hourly rate for any time worked over 40 hours per week. As with the minimum wage provisions of FLSA, elected officials, executive, administrative and professional employees, seasonal employees, and volunteers are exempt from the overtime provisions.

Hours worked by employees in a different capacity than their normal work won't, at their discretion, be counted for overtime purposes. 29 CFR § 553.30.

Police departments employing fewer than five full or part-time employees in "law enforcement activities" who are in all categories trained and empowered to enforce the law are exempt from the overtime provisions, as are fire departments with fewer than five employees in fire protection activities. 29 CFR § 553.200.

In larger departments, the time and one-half provisions are required for firefighters only after 53 hours per week (or 212 hours in a 28-day period) and for law enforcement personnel of 43 hours per week (or 171 hours in a 28-day period). 29 CFR § 553.201.

Attendance at required training facilities by police and fire personnel may constitute work and therefore is subject to the overtime provisions above. 29 CFR § 553.214.

Ambulance and rescue service employees are considered police or fire personnel for overtime provisions if they have received training in the rescue of police or firefighters injured on the job and they are regularly dispatched to crimes and/or fires. 29 CFR § 553.215.

Public employees may be given compensatory time off in lieu of overtime pay. It is also earned at time and one-half the hours worked over 40 per week with the above exceptions. Police, fire, and emergency employees, and employees who experience seasonal fluctuations in their workload may accrue up to 480 hours of compensatory time off. All others may accrue 240 hours. 29 CFR § 553.25. Any overtime work performed when an employee has accumulated the maximum number of hours of compensatory time must be paid.

Compensatory time off must be permitted to be used within a "reasonable time" after the request, so long as that does not "unduly disrupt" the operation of the agency. Upon termination, compensatory time must be paid to the employee. 29 CFR § 553.27.

There are several special definitions for "compensable hours" for FLSA purposes regarding public employees. "On call" employees are not reimbursed for time away from the work site unless "the employee cannot use the time effectively for personal pursuits."

Firefighters and police have special rules to determine whether "sleep time" or "meal time" is counted as "compensable hours." 29 CFR §§ 553.222, 223.

Time spent attending training required by the employer is generally compensable. However, attendance at in-house, specialized, or follow-up training required by law for employee certification is not compensable even when held outside regular working hours. Also excluded from compensation is specialized or follow-up training mandated by the state or federal government for employee certification. Police and fire personnel at a training academy are not considered on duty when not attending class or at a training session, if they are free to use such time for personal pursuits. 29 CFR § 553.226.

For a more extensive discussion of federal labor laws, consult the VLCT Municipal Assistance Center's *Municipal Employment Law Handbook*.

O. Other State and Federal Employment Mandates

1. **Military Leave and Reserve Training.** Towns must provide a paid or unpaid leave of absence for up to 15 days per year for permanent employees for armed forces reserve training, if the employee gives 30 days notice of date of departure and return. 21 V.S.A. § 491.

2. **Parental and Family Leave.** Towns employing ten or more full-time persons are subject to 21 V.S.A. §§ 470-474 which mandate leave for parental and family reasons. During any year, an employee is entitled to up to 12 weeks unpaid leave for the birth of a child or adoption of a child under the age of 16. 21 V.S.A. § 472. Likewise, family leave must be allowed in the case of serious illness of certain close family members of the employee. 21 V.S.A. § 472. Short-term family leave must also be allowed for up to four hours per 30-day period or 24 hours per year to allow employees to participate in some school-related activities of their children or to help children or some other family members with medical appointments or emergencies, or with other professional consultations. 21 V.S.A. § 472a. Note that all of these mandates are gender-neutral. For more information on federal and state law on this subject, go to http://www.atg.state.vt.us/display.php?pubsec=4&curdoc=267, the Vermont Attorney General's website.

3. **Legislative Leave.** Any town with five or more employees must allow a temporary or partial leave of absence to an employee elected to the General Assembly to perform any official duty in connection with his or her elected office. There are notification requirements and an appeal process. 21 V.S.A. § 496.

4. **Jury Duty Leave.** Employees must be granted leave to serve as jurors or as court witnesses. Seniority, fringe benefits, credit toward vacations, and other employment benefits must be granted. 21 V.S.A. § 499.

5. **Lie Detectors.** Except for municipal police officers, towns cannot use polygraph tests as a condition of employment or promotion. Examiners administering such tests have to follow rules set forth in the statutes. Violations of this law can result in up to a $1,000 fine and/or a six-month jail sentence. 21 V.S.A. §§ 494a-494e.

6. **Drug Testing.** This is a complex, changing, sometimes duplicative and sometimes contradictory area of employment law. Vermont state law has a general prohibition against drug tests as a condition of employment or promotion. However, an applicant *may* be given a drug test if he or she has been given an offer of employment conditioned on a negative test. Ten days' written notice is given listing all the drugs to be tested. The test is administered as part of a comprehensive physical exam and in accord with statutory requirements. An employee may be given a drug test if the employer has probable cause that the employee is using or is under the influence of a drug on the job. The employee is not terminated after a positive test if he or she successfully completes an employee drug assistance program provided by the employer. There are both civil and criminal penalties for violations. 21 V.S.A. §§ 511-519.

   The federal Omnibus Transportation Employee Testing Act requires drug and alcohol testing of municipal employees in "safety sensitive positions." This includes everyone who has a commercial driver's license (CDL). Town employees who drive commercial motor vehicles (most town highway trucks and municipal or school busses) all have CDLs and must be tested. Testing is required pre-employment, randomly, where there is reasonable suspicion and post-accident. It may also be required upon return to work or as a follow-up. The VLCT Property and Casualty Intermunicipal Fund (VLCT PACIF) runs a program for testing which municipalities may use whether or not they are members of PACIF. For more information, call VLCT at (800) 649-7915.

   Finally, the Drug Free Workplace Act of 1988 requires any federal grant recipient to certify that it will provide a drug-free workplace or lose the grant. Certification requirements include:

   - publishing and providing each employee with a statement notifying them that drug use, possession, or sale is prohibited, and specifying actions to be taken against those who do so;
   - establishing an ongoing drug-free awareness program for employees; requiring employees to abide by the statement above and notify the employer of any drug conviction occurring in the workplace within five days;
   - notifying the granting agency of such convictions; taking appropriate personnel action, up to and including termination; or requiring the convicted employee to participate satisfactorily in a drug abuse assistance program.

   For more information on the Drug Free Workplace Act, visit the United States Department of Labor's website at http://www.dol.gov/elaws/drugfree.htm.

7. **Employment Discrimination, Generally.** Both state and federal law prohibit employment discrimination. Vermont law prohibits discrimination against individuals on the basis of race, color, religion, ancestry, national origin, sex, sexual orientation, place of birth or age. In addition, it is illegal to discriminate against "a qualified handicapped individual" or a person with a positive HIV test. 21 V.S.A. § 495. There are a number of important definitions pertaining to discrimination in 21 V.S.A. § 495d. Note that sexual harassment is defined as a form of sex discrimination. There are numerous court cases and many court decisions that ruled against the employer in discrimination situations. When an employer becomes aware of

discrimination or even should be aware of discrimination, it is imperative to investigate the situation and to remedy the situation as soon as possible.

Employment and personnel problems are serious and can be subtle, pervasive, time-consuming and expensive. The best approach is to be aware of the law and changing public opinion and to tread carefully. Discrimination may occur or be alleged anytime between discussing the qualifications of the job with an applicant and after the employee has left the job. Again, we recommend that you consult the VLCT Municipal Assistance Center's *Municipal Employment Law Handbook*.

8. **Employment Discrimination – Disability.** State law and the federal Americans with Disabilities Act prohibit discrimination on the basis of handicap. 21 V.S.A. chapter 5; 42 USC § 12101. Municipal employers are no exception. If a "qualified individual with a disability" can perform the "essential functions" of a job with "reasonable accommodation" by the employer, he or she must be given equal consideration vis-à-vis other applicants for the position. A "qualified individual" is one who has the skill or training to do the job. For example, a person who is legally blind would not be qualified for a job as a bus driver because he or she would be unable to perform the essential functions of the job (including passing a driving test). An individual who is a skilled accountant but is wheel chair bound is a qualified applicant for the accountant position. If there are two steps from street level up to the town office complex, construction of a wheel chair ramp would be a "reasonable accommodation" to make so that this person could do the job.

   When planning to fill a position, the first step a municipality should take is to identify the "qualifications" needed and the "essential functions" of the job. Does the job require strength and agility, good communication skills, long or irregular hours, special educational background or professional licensure? Must the person hired be able to read and write, carry heavy objects, or perform civil engineering feats of great complexity? Unless the requirements of the job are defined, it will be hard to decide if someone is "qualified" or not.

   So, what is "reasonable accommodation?" This may be a little harder to define since it will vary so much depending on circumstances. No two potential employees are the same, so the specific facts of each situation must be examined. Also, what may be reasonable for a large municipality may be impossible for a small town.

   Another question that arises is whether an employer must hire someone who has a disability. The answer is no. After determining that the applicant is qualified and can do the essential functions of a position, an employer compares him or her with the other applicants on an equal basis. Person A has five years experience; Person B is brand new. Person A has a great track record and references; Person B's are so-so. Make a decision that can be supported as non-discriminatory, just as you would in any close call hiring situation.

   For more information on the Americans with Disabilities Act, visit the United States Equal Employment Opportunity Commission website at http://www.eeoc.gov/types/ada.html.

9. **Unemployment Compensation.** Town employees are eligible for unemployment compensation under 21 V.S.A. Chapter 17 to the same extent as private sector employees. However, as municipal employers, towns have a choice concerning how to pay for unemployment insurance coverage.

Two methods are available. The first is called the "taxable alternative," whereby an employer participates in a state sponsored insurance program. The employer pays taxes into a state fund from which all unemployment benefits are paid. An employer's tax is calculated through a mathematical formula that utilizes the employer's payroll and unemployment claim information.

The second method is called the "reimbursable method" and is available only to municipal employers and other non-profit employers such as the State of Vermont, colleges and churches. Under this alternative, an employer elects not to pay unemployment taxes but agrees to reimburse the state unemployment fund, dollar for dollar, for unemployment benefits paid to former municipal employees. Unless there are claims, an employer may find this method a more attractive financial alternative. The Vermont League of Cities and Towns has taken the reimbursable method a step further with the VLCT Unemployment Insurance Trust, Inc. This risk-sharing pool combines the money saving attraction of the reimbursable method with the added safety of self-insuring a large group. The Trust also provides all administrative and legal services to member municipalities. For questions on unemployment compensation, call David Sichel, Deputy Director for External Affairs & Planning, at (800) 649-7915.

10. **Workers' Compensation.** Town employees are eligible for workers' compensation benefits under 21 V.S.A. chapter 9 to the same extent as private sector employees. Rules governing an employer's purchase of workers' compensation insurance from commercial insurance carriers or related self-insurance options also apply, except that municipal employers have an additional option to participate in group self-insurance through "municipal insurance agreements." Such an option is available with the VLCT Property and Casualty Intermunicipal Fund (VLCT PACIF). This municipal risk management pool currently offers its 346 member city, town and other special districts low cost, high quality workers' compensation coverage, as well as property and liability insurance. VLCT PACIF complements its coverage with a wide range of loss prevention, safety and employee wellness programs for member municipalities and their employees. If you have questions about VLCT PACIF's workers' compensation program, call David Sichel at (800) 649-7915.

P. VERMONT MUNICIPAL EMPLOYEE RETIREMENT SYSTEM (VMERS)

Most Vermont towns (213) provide their municipal employees with a retirement plan offered by the Vermont Municipal Employee Retirement System (VMERS), a retirement system established by the Legislature and administered by the State Treasurer's Office. Towns may join VMERS by vote of the legislative body of the town. 24 V.S.A. § 5053. Once in VMERS, towns may only withdraw through a special act of the Legislature.

The Legislature sets both the employee contribution and the retirement benefits. The oversight of the system and the setting of the town's contribution are done by a five-member retirement board comprised of the state treasurer, a gubernatorial representative, a municipal employer representative and two municipal employee representatives. Participating employees elect the employer and employee representatives. 24 V.S.A. Chapter 125. For information about VMERS, visit http://www.vermonttreasurer.gov/retirement/muni, or call the Retirement Division at the State Treasurer's Office at (802) 828-2305.

Q. COLLECTIVE BARGAINING

Collective bargaining is the process by which a group of employees may organize or unionize in order to negotiate with their employer about conditions and terms of employment. When the employer is a municipality, the methods by which negotiation may be carried out are controlled by the Vermont Municipal Labor Relations Act (VMLRA). 21 V.S.A. Chapter 22. Note that there is also a National Labor Relations Act which, where it conflicts with the state version, will take precedence. 29 U.S.C. §§ 151, et. seq. The Vermont Labor Relations for Teachers Act may apply when the employee is a teacher. 16 V.S.A. Chapter 57; 21 V.S.A. § 1735.

The purposes of the Vermont Municipal Labor Relations Act are to:

- prescribe the rights of both employees and employer;
- provide an orderly and peaceful process for safeguarding those rights;
- protect employees' right to organize and bargain collectively;
- define and proscribe harmful labor practices; and
- protect the rights of the public. 21 V.S.A. § 1721.

Twenty-one V.S.A. § 1722 cites a number of important definitions. For example, a "municipal employer" is one "which employs five or more employees." The term "municipal employee" does not include such people as elected officials, people in supervisory positions, or those with probationary status.

The group of employees represented by an employee organization or union is called a bargaining unit. That unit may be established by voluntary recognition of it by the municipality. Thus, a number of people who work for the municipal electric utility might say they would like to bargain collectively as a local chapter of an electrical workers' union. If the majority of the employees support this idea and there is no rival organization, and the "bargaining unit is appropriate," the employer may recognize that unit and negotiate with it as the exclusive representative of those employees when contract negotiations occur. 21 V.S.A. § 1723.

Alternative procedures for establishing a bargaining unit or for changing bargaining units require that either the employees or employer file a petition with the Vermont Labor Relations Board. The Board or its designee then investigates and may either dismiss the petition or schedule a hearing before the full Board to determine if there is a question regarding employee representation using the criteria listed in 21 V.S.A. § 1724(c). The procedure for the hearing is prescribed by Board rules and by 21 V.S.A. § 1724(b)(1). The Board must then conduct a secret ballot election to determine what group must represent the employees. A majority of at least 51% of the votes is necessary to approve a representative. 21 V.S.A. § 1724. For more information on the Vermont Labor Relations Board, visit http://www.state.vt.us/vlrb.

After the bargaining unit is established, the employee organization and the employer "shall meet at any reasonable time and shall bargain in good faith with respect to wages, hours and condition of employment." 21 V.S.A. § 1725(a). If any provisions of the negotiated agreement conflict with state law, municipal charter, or special act, that negotiated item will be invalid except for matters voluntarily submitted for binding arbitration under 21 V.S.A. § 1734. In contrast, if the legislative body of a municipality approves a written collective bargaining agreement, provisions in the agreement that are in conflict with any local ordinance, bylaw, rule or regulation will prevail. For example, if the negotiated agreement says that any grievance must be filed in writing

within 15 days of the event, then a local regulation requiring filing within ten days would be invalid for those employees covered by the negotiated agreement. 21 V.S.A. § 1725(c).

Since the object of collective bargaining is to provide a safe and fair employer/employee relationship, there is a list of prohibited "unfair labor practices" for both the employer and employee organization. Some are different, taking into account the stance of the particular party, but some are essentially the same. For example, neither party may coerce or restrain an employee in the exercise of his or her rights, or refuse to "bargain collectively in good faith," or discriminate based on "race, color, religion, creed, sex, sexual orientation, national origin, age or political affiliation." 21 V.S.A. § 1726.

Alleged unfair labor practices must be reported to the Board for action in a timely manner. The Board has discretion over whether to bring charges based on the allegations. *Hinesburg School Dist. v. Vt. NEA*, 147 Vt. 558 (1986). If the Board brings charges, the accused is entitled to a hearing which must be conducted, so far as is practical, much like a trial. The Board shall make its decision based on the preponderance of the evidence and shall issue a written decision and order. 21 V.S.A. § 1727. Enforcement of Board orders is made through the superior court. 21 V.S.A. § 1729.

If employer and employees are unable to negotiate an agreement, they may petition for an impartial mediator. 21 V.S.A. § 1731. If the parties still cannot reach an agreement, the commissioner of the Department of Labor will appoint a fact finder with the power to convene hearings, request documents and hear testimony. The fact finder must then reach conclusions and make recommendations, having given weight to the various factors in 21 V.S.A. § 1732(d). The recommendations may be made public after ten days. They are advisory only and not binding on either party. Expenses for the mediation and fact-finding are shared equally by the parties. 21 V.S.A. § 1732(e), (f).

To point out several aspects of collective bargaining not covered above:

- Free speech is protected if it "contains no threat of reprisal or promise of benefit." 21 V.S.A. § 1728.
- Strikes may be prohibited under certain circumstances. 21 V.S.A. § 1730.
- Where parties have negotiated a method to resolve grievances, that method must be exhausted before there can be an appeal to the board. *Burlington Area Public Employees Union v. Champlain Water Dist.*, 156 Vt. 516 (1991).
- *In re AFSCME, Local 490*, 153 Vt. 318 (1989), defines when an employee is a "supervisor" and is barred from belonging to the bargaining unit.
- An employer cannot unilaterally change conditions of employment while engaged in good faith negotiations for a new contract. *Burlington Fire Fighters' Assn. v. Burlington*, 142 Vt. 434 (1983).
- *In re AFSCME, Local 1201* 143 Vt. 512 (1983), defines "confidential" employee.
- Agreements may include a provision for payroll deduction of union dues, etc., and for binding arbitration of grievances (the cost of which to be shared equally). 21 V.S.A. § 1734(a).
- For purposes of determining unfair labor practices under 21 V.S.A. §§ 1726-1729, a teacher shall be considered a municipal employee, and a school district shall be a municipal employer. 21 V.S.A. § 1735.

R. BINDING ARBITRATION

Final and binding arbitration is a method for resolving labor disputes that have not been resolved by collective bargaining or by mediation and fact finding. The legislative body of a municipality and the employees' exclusive bargaining agent may voluntarily submit a contract impasse to final and binding arbitration at any time. Alternatively, the municipality may vote by referendum to adopt binding arbitration, in which case the arbitrator then has the power to resolve all disputed issues involving wages, hours and conditions of employment. 21 V.S.A. § 1733(a).

When a labor dispute has progressed through negotiation, mediation, and fact finding, and there is still an impasse 20 days after the fact finder has made his or her findings public, the matter goes before an arbitration panel. 21 V.S.A. § 1733(b). (Alternatively, the legislative body of the municipality may decide under certain circumstances to go directly from mediation to binding arbitration, skipping the fact finding stage. 21 V.S.A. § 1733(f).) An arbitration panel consists of one representative chosen by each of the two parties and a third member who is either selected by the other members or appointed by the court. The panel has 30 days to decide the disputed issues, and that decision then becomes the agreement between the parties. 21 V.S.A. § 1733(b). In making the decision, the panel must weigh the factors listed in 21 V.S.A. § 1732(d).

An appeal of the arbitration decision may be made to the superior court within 30 days of the delivery of the decision to the applicant (appellant) or within 30 days of the discovery of "corruption, fraud or other undue means." In considering the appeal, the court must consider the factors listed in 21 V.S.A. § 1732(d). According to 21 V.S.A. § 1733(d), the court may reverse the arbitrator's decision if it finds:

- corruption, fraud or other undue means;
- partiality or prejudicial misconduct by the arbitrator;
- the arbitrator exceeded his power or required a person to engage in unlawful conduct;
- there was no enabling arbitration agreement; or
- the decision was not supported by substantial evidence.

Several miscellaneous provisions in 21 V.S.A. § 1734 include:

- certain payroll deductions are negotiable;
- use of binding arbitration is negotiable, and the cost of arbitration shall be shared equally;
- certain grievances and questions of tenure may be decided by binding arbitration even though they were not subjects of the collective bargaining agreement; and
- grievances may be resolved directly between the employer and employee under some circumstances.

S. EMPLOYEE DISCIPLINE, DISCHARGE AND DUE PROCESS

This area of municipal employer-employee relations is governed by a veritable thicket of federal, state and local laws, policies, and, in certain cases, collective bargaining agreements. Because of this, it is responsible for generating many of the calls VLCT receives from local officials.

Faced with disciplining and/or discharging an employee, selectboards must keep in mind that, as a governmental employer, a municipality is subject to the Fourteenth Amendment to the U.S.

Constitution, which prohibits the "state" from depriving anyone of "life, liberty, or property, without due process of law…." This is a key difference between the municipal workplace and the private sector.

In practice, being subject to the Fourteenth Amendment means that if a municipal employee has a property or liberty interest in continued employment, his or her interest is protected by the U.S. Constitution and the municipality must provide constitutionally sufficient due process before 'depriving' the employee of his or her position. Common sources of property interest are employment contracts, collective bargaining agreements, letters of appointment, state statutes, local ordinances, personnel policies or city charters.

Liberty interests are not as obvious as property interests. They arise not from the nature of employment but, rather, from the nature of the particular accusations which form the basis of the termination from employment. A liberty interest involves a person's reputation, honor or integrity, and cannot be deprived by, for example, false accusations which the employee does not have the opportunity to rebut or which will make it difficult for the employee to find subsequent employment.

It is important to understand that a property interest can be as little as the right granted by a personnel policy to a certain series of disciplinary steps before discharge can take place or as extensive as a multi-year contract providing continuous employment if certain conditions are met. Municipal employees do not automatically have a property interest in their positions – each case must be evaluated individually – and there is much a municipal employer can do to prevent the creation of such an interest.

Without a property or liberty interest in his or her job, a municipal employee in Vermont generally serves as an "at will" employee. (In an at will employment situation either party may terminate the employment relationship at any time without process and for any or no cause.) It should be noted, however, that even an at will employment relationship does not permit an employer to discharge an employee for reasons which are contrary to the public's interest. For example, to discharge an employee on the basis of his or her age or sex would probably be found by the courts to violate public policy interests (in this case laws protecting workers from discrimination based on age or sex).

1. **What Constitutes Adequate Due Process?** The United State Supreme Court initially considered the due process requirements of discharge from government employment in its landmark decision *Cleveland Board of Education v. Loudermill* when it stated that due process requires "some kind of hearing prior to the discharge." *Loudermill*, 470 U.S. 532, 542-44 (1985) *quoting Boddie v. Connecticut*, 401 U.S. 371, 379 (1971). According to the Court, the essential requirements of due process are notice of the charges and an opportunity for the employee to present his or her side of the story prior to discharge. Note that the Court did not hold that a full evidentiary hearing is required to satisfy due process requirements, but, rather, that the employee must simply be provided an opportunity to respond to the employer's termination notice. *Id*.

   A municipality that violates an employee's right to due process prior to his or her dismissal may face liability under Section 1983 of the Civil Rights Act. 42 U.S.C. § 1983. This is a very common source of lawsuits alleging wrongful discharge and employment discrimination. Generally, however, courts have found municipalities to be liable under

Section 1983 only if the deprivation of due process was part of a general policy, practice or custom, not simply an individual incident.

2. **Personnel Policies and Due Process.** As noted in Section H. above, municipalities may adopt workplace policies that govern the behavior of employees and spell out the employer and employee's roles and obligations. As beneficial as they are, many municipalities are hesitant to adopt personnel policies because of the impact the policies could have on the at-will employment relationship the municipality has with its employees. While each municipality must strike this balance for itself, experience has shown that wrongful discharge lawsuits are more often avoided by communities that have adopted and scrupulously follow clear and detailed personnel policies, than those that have no formal employment procedures or policies in place. This may be because an employee who is discharged may be more likely to feel as though he or she was given arbitrary or discriminatory treatment if no personnel policy guided the discharge.

   If your municipality does decide to enact a personnel policy, there are a number of provisions that can be included to minimize lawsuits or help to favorably resolve those which are brought.

CHAPTER 6
BOARDS AND COMMISSIONS

A. BOARD OF CIVIL AUTHORITY

The board of civil authority is the body responsible for determining voter eligibility and hearing property tax appeals. 17 V.S.A. Chapter 43; 32 V.S.A. Chapter 131. The town clerk serves as clerk of the board and she or he, or any selectperson, may call a meeting of the board by posting notice and giving written notice to each member. The board must choose a chairperson. 24 V.S.A. § 801.

Unless otherwise specified by municipal charter, a town board of civil authority is comprised of the selectpersons, town clerk and justices residing in town. 24 V.S.A. § 801. In a city, the mayor, aldermen, city clerk and justices residing in the city make up the board and in a village, it is comprised of the trustees, village clerk and justices residing in the village. 7 V.S.A. § 2103(5). If the board of civil authority does not have at least three members from each major political party, and there is a request by the party committee or by three or more voters, the selectboard must appoint additional members to bring the underrepresented party's membership on the board to three. The selectboard must appoint the additional members from a list of names submitted to it by the underrepresented party. The persons so appointed serve as board members for election duties only and have no authority to act in matters unrelated to elections. 17 V.S.A. § 2143.

1. **Elections.** Section 2142 of Title 17 provides that the town clerk shall call such meetings of the board of civil authority "as may be necessary before an election or at other times for revision of the checklist." However, at least one meeting must take place after the deadline for filing applications to be added to the checklist and before the day of an election. The deadline for filing an application is 12 noon on the second Monday before the election. 17 V.S.A. § 2144.

   When the board is addressing election matters, the general rule is that "those members … present and voting shall constitute a quorum, provided that official action may not be taken without the concurrence of at least three members of the board." 17 V.S.A. § 2103(5). There is a statute that seems to create an exception to the rule that there must be three members present in order to act. However, it applies to *Election Day only*. Seventeen V.S.A. § 2451 says, "A quorum … shall be available at all times when the polls are open, and those members … present … shall constitute a quorum…." This has been interpreted to mean that, if even one member of the board of civil authority is present at the polls, that person may rule on voter qualification and registration at that time.

   When the board is dealing with non-election matters, "The act of a majority of the board present at the meeting shall be treated as an act of the board." 24 V.S.A. § 801. For example, if five of the 12 members are present, then the concurrence of three of those five would be a valid act of the board.

   During the time that the board of civil authority meets, it will consider all the applications for addition to the checklist. If there is some question concerning an application, the applicant may be examined under oath concerning the facts stated in the application. 17 V.S.A. § 2146(a). The board is prohibited from requiring additional information or personal

appearances before the board by any particular class or group of individuals (e.g. students). Each applicant must be treated separately.

Note that when the "motor voter" law went into effect in Vermont in 1997, it added to the ways in which a person may register to vote. Registration may now be done simultaneously with application for a motor vehicle driver's license, by a "voter registration agency" (defined in 17 V.S.A. § 2103 (41)), or directly by the town clerk. 17 V.S.A. § 2144a–2145b. Completed "motor voter" applications are forwarded to the Secretary of State's Office where they are processed and forwarded to the voter's town of residence.

When the board approves an application, it must notify the applicant by returning to him or her one copy of the application. A second copy must be sent to the town in which the applicant was previously registered to vote before adding the applicant's name to the checklist. The original application must remain on file in the town clerk's office. 17 V.S.A. § 2145.

If the board rejects an application, it must provide the applicant with an immediate explanation of its action, either in person or by first class mail. Notice of the rejection must include the reason for the rejection and must be in substantially the form found in 17 V.S.A. § 2146. The rejected applicant may ask to appear before the board for reconsideration and may present additional information or witnesses to plead the case. Alternatively, the applicant may appeal directly to the courts.

When a town clerk receives a copy of a voter's death certificate, official notice that a voter is now a registered voter in another town, or a written request from a voter that his or her name be stricken, the clerk shall remove the voter's name from the checklist. 17 V.S.A. § 2150(a). In addition, the board of civil authority may challenge the eligibility of a voter at any time whom they believe to be dead, moved out of town or registered in another place. The board has the authority to remove the names of persons no longer qualified to vote. However, the board must act in accordance with procedures outlined in 17 V.S.A. § 2150.

If the board of civil authority does not immediately know if a voter is still qualified to vote in the municipality, the board shall attempt to determine with certainty his or her true status. The board may rely on official and unofficial public records (for example, telephone directories, city directories, newspapers, death certificates, tax records, and voter checklists from the past four years), and may designate a person(s) to try to contact the voter personally.

If the board cannot locate the voter or finds that the voter may no longer be eligible to vote in its municipality or has not voted for the past four years, then the board should send written notice to the voter in accordance with 17 V.S.A. § 2150. The board shall remove his or her name from the checklist under the following conditions:

- the voter consents to removal of his or her name from the checklist;
- all efforts to determine current residency have failed; or, finally,
- evidence indicates the voter is no longer eligible to vote in the town.

If at any time following removal of a name from the checklist the board determines that the person was qualified to vote, the person's name is to be added to the checklist. 17 V.S.A. §§ 2147, 2150(d). Each voter has a primary responsibility to make sure that his or her name is properly added to and retained on the checklist. 17 V.S.A. § 2147.

The board of civil authority is required to keep detailed records of its proceedings with respect to removing names from the checklist. The records must include a clear statement of the reason(s) that each name was removed from the checklist, and the working copy or copies of the checklist used in the biannual checklist review. 17 V.S.A. § 2150(c). A letter certifying that the board has complied with these requirements must be filed with the Secretary of State by September 20th of each odd-numbered year. These records must be forwarded upon request to the Secretary of State, and to any district or superior court judge. 17 V.S.A. § 2150(5)(c).

Any person whose application to vote has been rejected or whose name has been removed from the checklist may appeal to any superior or district judge in the county or district in which the applicant claims residence. 17 V.S.A. § 2148(a). The appeal shall be conducted as soon as possible to permit a successful appellant to vote at the pending election. The applicant shall not be permitted to vote unless and until the town clerk receives a written order from the court stating that the voter be permitted to vote.

2. **Tax Appeals.** Property owners who disagree with the listers' appraisals are entitled to a hearing before the listers. 32 V.S.A. § 4221. If they are not satisfied with the decision following that hearing, they may appeal to the board of civil authority. The appeal must be made in writing, stating the grounds for such appeal, and must be lodged with the town clerk, who shall record it and call a meeting of the board of civil authority "forthwith" to hear the appeal. 32 V.S.A. § 4404.

   At the beginning of the meeting, the members of the board must take, sign, and file in the town clerk's office the oath set out in 32 V.S.A. § 4405. The oath and the list of members taking the oath should be recorded in the minutes. The board then sits as a quasi-judicial body and considers the evidence presented by the aggrieved taxpayer (or his or her agent), the listers and the town agent. 32 V.S.A. § 4408. After it considers the evidence presented, the board must appoint an inspection committee consisting of three or more members to inspect each property subject to appeal. The committee must inspect the property and submit a written report to the board within 30 days. Within 15 days of receiving the committee report, the board shall issue a written decision, which must include the reasons the board arrived at its conclusion. This document is then filed with the town clerk, who records it in the same book where the appeal was recorded and, without delay, notifies the appellant of the action of the board by certified mail. 32 V.S.A. § 4409.

   Note that, "if the board does not substantially comply with the [statutory] requirements" and if the appeal is not withdrawn, the appraisal will remain at the amount set before the appealed change was made by the listers. The town clerk must record that fact and notify the taxpayer by certified mail. 32 V.S.A. § 4404.

   If a taxpayer or selectperson of a town is not satisfied with the decision of the board of civil authority, he or she may appeal to the director of the Division of Property Valuation and Review or the superior court. 32 V.S.A. § 4461.

B. LOCAL BOARD OF HEALTH

1. **Appointment and Removal of Local Health Officer.** The legislative body of a municipality must recommend a local health officer to the state commissioner of Health. Upon receipt of

the selectboard's recommendation, the commissioner will appoint the person recommended and issue a certificate of appointment. 18 V.S.A. § 601(a). The health officer is appointed for a term of three years and until replaced. 18 V.S.A. § 605. The commissioner may remove a health officer at any time for cause. 18 V.S.A. § 601. Although the statute does not specify any qualifications one must have to serve as a local health officer, inasmuch as the health officer's authority and responsibilities are considerable, he or she should be chosen carefully.

If the selectboard does not recommend someone to the commissioner of Health, the commissioner shall give 30 days written notice to the board of the need to make a recommendation. At the end of the 30-day notice period, the commissioner of Health shall appoint a local health officer even if no recommendation has been made. The commissioner or the state board of health may exercise all authority of a local health officer. 18 V.S.A. § 109.

The selectboard provides and controls all compensation to the local health officer and may reimburse the health officer for all reasonable expenses incurred in the execution of his or her duties. 18 V.S.A. § 602. The health officer shall not incur significant expense in the name of the municipality for the prevention, removal, or destruction of any public health hazard or the mitigation of any public health risk without the consent and approval of the local selectboard. 18 V.S.A. § 615.

2. **Health Districts.** Municipalities have the option, with the approval of the commissioner, to form a health district with other cities and towns. Through the selectboard of the member municipalities, appointment of a district health officer may be recommended to the commissioner of health. Once appointed, the district health officer may notify the selectboards of member municipalities that he or she will perform the duties of the local health officer, and proceed to do so at any time after the written notice. Upon authorization of the selectboard of each member municipality, and with the advice of the district board of health, the district health officer may employ people necessary to help the health officer in carrying out a preventive, protective and promotional health program in the district. 18 V.S.A. § 601(b).

   If two or more municipalities join to create a health district, they may establish an advisory district board of health. The selectboards of the member municipalities may also provide for the appointment and terms of service of members who are to represent citizens of the district's member municipalities. Member municipalities may accept grants and may dedicate local tax revenues to the support of the district health officer, advisory board, district employees and programs. 18 V.S.A. § 60l(b).

3. **Local Health Board.** The local health officer, with the selectboard of a town or the city council, constitutes the local board of health. 18 V.S.A. § 604. The health officer is the secretary and executive officer of the local board of health. 18 V.S.A. § 605.

4. **Power of the Board of Health.** The local board of health may make and enforce rules and regulations that relate to prevention, removal or destruction of public health hazards and the mitigation of public health risks. These rules and regulations must be approved by the commissioner of health and posted and published in the same manner as is required for ordinances. 18 V.S.A. § 613(a). (See Chapter 9 of this handbook or 24 V.S.A. chapter 59 regarding ordinances.)

The local health board has jurisdiction over sewage disposal and treatment if they pose a risk to the public health. The health board may act to abate nuisances affecting public health caused by a system that allows surfacing of sewage, pollution of drinking water supplies, groundwater and surface water, and that does not maintain sanitary and healthful conditions during operation. Under this chapter, the health board *may not* adopt ordinances, rules or regulations relating to design standards for on-site sewage disposal systems. On-site septic system ordinances must be adopted by the selectboard and must be approved by the Vermont Department of Environmental Conservation. 18 V.S.A. § 613(b)(c); 24 V.S.A. chapter 102.

The health board or local health officer may call upon sheriffs, constables, and police officers to assist them in carrying out their responsibilities. Should an officer refuse or neglect to give assistance, he or she may be fined up to $200. In addition, the health officer may always call state health officials for technical assistance. 18 V.S.A. § 617. The first contact should be with the "Environmental Health Designee" for the Health Department's district office.

5. **Local Health Officer Responsibilities.** In addition to serving as secretary and executive officer of the board of health, the local health officer has the following responsibilities. Within his or her jurisdiction, he or she shall:

   a. Conduct investigations upon receipt of information regarding a condition that may be a public health hazard;

   b. Enforce the provisions of Title 18, and rules and permits issued under its authority;

   c. Prevent, remove or destroy any public health hazard or mitigate any significant public health risk consistent with the provisions of Title 18; and

   d. In consultation with the State Department of Health, take steps to enforce the provisions of Title 18, Chapter 3 (which refers to responsibilities of state board of health and commissioner of health, some of which may be delegated to the local health officer). Health hazards relating to a public water system or a food or lodging establishment must be reported immediately to the division of environmental health (802-863-7220 or 800-439-8550). Any other health risk must be reported to the environmental health division within 48 hours, as must be any action taken by the health officer. 18 V.S.A. § 602(a). (For more information, see "Subsection 6, Enforcement" below.)

   The health officer shall also inspect schools, school lunch facilities and public buildings on an annual basis and report the findings in accordance with 18 V.S.A. § 608.

6. **Enforcement.** A health officer may issue an emergency health order without prior hearing when necessary to deal with an imminent and substantial health hazard or substantial public health risk. Such order must include a written statement of the reasons for the order, the supporting evidence and the procedural rights of the alleged violator. This order must be served in accordance with Vermont Rules of Civil Procedure, Rule # 4. The person accused has a right to a hearing before the selectboard within five days. 18 V.S.A. § 127.

   A non-emergency health order may be issued by the selectboard or by the commissioner for the reasons cited in 18 V.S.A. § 126. Again, there are procedural requirements that must be followed. Civil enforcement of a health order may be taken in superior court, which has broad powers including injunctive relief and fines of up to $10,000 per violation. Likewise, criminal enforcement may be pursued, which provides for fines up to $25,000 or jail time up to six months or both. 18 V.S.A. § 130-131.

Any act, decision or health order may be appealed to the State Board of Health. Hearings on those appeals shall be conducted according to the Vermont Administrative Procedures Act. 3 V.S.A. chapter 25. Appeals from the State Board's decision are to the Vermont Supreme Court. 18 V.S.A. § 128.

7. **Dead Bodies.** The town clerk or deputy is charged with responsibility for registering deaths that occur in town and for issuing "burial-transit permits." In many cases, a person dies in a hospital; thus, a physician attends to the details of the death. Language still in the statutes talks about a local health officer's role when death results from certain communicable diseases. However, this section of the statute has fallen into disuse because of the roles now played by medical examiners and physicians. 18 V.S.A. § 5201.

8. **Health Care Services.** Although not directly related to the functions of a local board of health, a municipality or two or more municipalities working together may appropriate money for services to be provided by doctors, nurses, ambulances and hospitals. 24 V.S.A. chapter 69.

C. CEMETERY COMMISSIONERS

Generally, town cemetery matters are the responsibility of the selectboard. However, a town may vote to place its public burial grounds under the charge of three or five elected cemetery commissioners. In that case, all responsibility on the part of the selectboard regarding town cemeteries shall cease. 18 V.S.A. § 5373. Unlike other town offices, the selectboard does not fill vacancies on the cemetery commission. Rather, they are filled "by the remaining commissioners until the next annual meeting." 18 V.S.A. § 5374. The board of cemetery commissioners has sole control over monies received and expended for town cemetery purposes (18 V.S.A. § 5377), and has authority to adopt bylaws and regulations for such burial grounds (18 V.S.A. § 5378). The town, by vote, may take its burial ground out of the charge of the board of cemetery commissioners and give it back to the selectboard. 18 V.S.A. § 5381.

D. BOARD OF TAX ABATEMENT

The board of abatement for each town consists of the members of the board of civil authority (town clerk, the selectpersons, and the justices of the peace), the listers and the town treasurer. This board has jurisdiction over the abatement of town taxes and town school district taxes.

Generally, the majority of the board (a quorum) must be present in order to hold a meeting. The act of a majority of that quorum is required for a binding action of this board. (For example, of a 13-member board, seven must be present to hold a meeting, and the concurrence of four of those present will constitute binding action.) However, this quorum requirement is not necessary if the town treasurer, a majority of the listers and a majority of the selectpersons are present at the meeting. For example, a meeting of the treasurer, two listers and two of a three-member selectboard is a legal meeting of the board of abatement. 24 V.S.A. § 1533. The meetings of the board of abatement are noticed in the same manner as for the board of civil authority. (See above section on board of civil authority.) 24 V.S.A. § 1534.

Twenty-four V.S.A. § 1535 provides authority to abate, in whole or in part, taxes, interest and collection fees accruing to the town in the following cases:

- taxes of persons who have died insolvent;

- taxes of persons who have moved from the state;
- taxes of persons who are unable to pay their taxes, interest, and collection fees;
- taxes in which there is manifest error or a mistake of the listers;
- taxes upon real or personal property lost or destroyed during the tax year; and
- certain taxes exempt under 32 V.S.A. § 3802(11).
- taxes upon a mobile home moved from the town during the tax year as a result of a change in use of the mobile home park land or parts thereof, or closure of the mobile home park in which the mobile home was sited, pursuant to 10 V.S.A. § 6237.

If the board abates a certain amount of tax, the uncollected interest and fees relating to that amount are also automatically abated. The board of abatement must state in detail the reasons for its decisions. Note that there is room for the board's discretion but *only within the grounds listed in the statute*. The board may not abate taxes for non-statutory reasons.

Any amount already paid on taxes that are abated may be refunded or applied as a credit against the tax for the ensuing year or years. Note that if the town has voted to collect interest on overdue taxes under 32 V.S.A. § 5136, a like amount of interest must be paid to the person whose taxes have been abated under 24 V.S.A. § 1535.

The board of abatement must make a record of any taxes, interest and fees that are abated, and this record must be recorded in the office of the town clerk. A certified copy shall be forwarded to the collector of taxes and to the town treasurer. The tax collector then shall mark in the tax bill the taxes, interest and fees abated. 24 V.S.A. § 1536.

The question arises as to how Acts 60 and 68 have affected abatement of taxes. The local board of abatement may still abate property taxes, including education taxes. However, that does not reduce the amount of money the municipality will receive or will be required to pay to the school district. For example, the board of abatement reduces X's taxes so that X's school tax drops from $500 to $300. The municipality still owes $500 to the system, and must make up the difference. (Questions regarding this may be addressed to Property Valuation & Review at 802-828-5860.)

E. LIBRARY TRUSTEES

A town may establish a public library. 22 V.S.A. § 141. If it does, unless the municipality votes to elect a board of library trustees, the selectboard must appoint not fewer than five trustees for staggered terms. 22 V.S.A. § 143. The trustees then have full power to manage the public library, make bylaws, establish a library policy and receive, control and manage library property. 22 V.S.A. § 142. The trustees may appoint a director. 22 V.S.A. § 143. Until trustees are elected or appointed, monies raised for a library shall be paid out by an agent appointed by the selectboard. 22 V.S.A. § 144.

The selectboard may vote to place in the library copies of certain documents received. They remain the property of the municipality but can be used by the library until the board votes otherwise. 22 V.S.A. § 146. (For more on libraries, see Chapter 13, Section L.)

F. WATER COMMISSIONERS

If a town has a municipal water system, it may vote to have a board composed of three water commissioners to supervise the system. If the town does not vote to have such a board, the selectboard must appoint three commissioners to supervise the water system. The terms of the commissioners will be for three years each, with the first water commissioners serving a one-year, a two-year and a three-year term so as to stagger the terms of office. 17 V.S.A. § 2649. These commissioners may be members of the selectboard.

A water commissioner who has been appointed by the selectboard may also be removed by the board, if it finds cause to do so, after he or she has been given due notice and a hearing has been held.

If an existing or proposed municipal water system does not have commissioners, a petition signed by at least five percent of the town's legal voters may be presented to the selectboard asking that an article to determine whether the town wishes to have such officers be inserted in the annual town meeting warning. 17 V.S.A. §§ 2651, 2652.

These water commissioners are the supervisors of the town's water department. It is their responsibility to establish the water rates and all the rules and regulations for the control and operation of the department. If they choose to, they may appoint a superintendent who then may also be removed from that position. The law stipulates that this appointment and removal is "at the pleasure" (of the commissioners), so a hearing need not be held nor reason given in the event of the removal of a superintendent appointed by the commissioners, unless the municipality's personnel policy or the union contract provides otherwise. 24 V.S.A. § 3313.

All the rents and receipts received by the water department for commercial and residential water use within the town must be used to repay the principal and interest on the water bonds, for repairs and for the general management of the department until such time as all the bonds have been paid. 24 V.S.A. § 3313.

Every bond issued by the town for water purposes under the provisions of 24 V.S.A. §§ 3309 and 3310 must be signed by the town clerk and treasurer, and certified by the clerk indicating that the bond is one of a series authorized by the town. Records must be kept of these bonds, when they are due, and the payment date of each. 24 V.S.A. § 3314.

The town in which a municipal water district is located has the power to make, alter, amend or repeal ordinances, bylaws and regulations pertaining to the water district, as long as these are consistent with Vermont law. The town also has the right to impose and enforce penalties for those water customers who disregard these regulations. 24 V.S.A. § 3315.

For more information on municipal water treatment systems, see Chapter 12, Section C.

G. SEWER COMMISSIONERS

Municipalities have the authority to own and operate "sewage systems" and "sewage disposal systems" under 24 V.S.A. chapters 97 and 101. It appears from the statutes that a "sewage disposal system" includes a sewage treatment plant, whereas the plain "sewage system" includes only the pipes and sewers needed to convey sewage to a treatment plant. Under either chapter, management is vested in commissioners.

Reading statutes 24 V.S.A. §§ 3506 and 3514 together, it appears that the "sewage system" or the "sewage disposal system" board of commissioners may consist of the legislative body of the municipality or it may be appointed by that legislative body. If the board is appointed, its members must be legal voters of the municipality. Appointed members may be removed from office by the legislative body after notice and hearing. It is possible to have a single board or separate "sewage system" and "sewage disposal system" boards. 24 V.S.A. § 3506.

There is much overlap in the authority given to municipal "sewage systems" and "sewage disposal systems." There are the powers to purchase, construct, tax, set rates and charges, enter onto land, enforce liens, bond and pass ordinances. Many of the powers given explicitly to the "sewage disposal system" are also given to the "sewage systems" by 24 V.S.A. § 3508. A commissioner on one of these boards must be familiar with both chapters 97 and 101 in order to understand his or her authority and duties.

For more information about municipal sewer systems, see Chapter 12, Section D.

H. LIQUOR CONTROL COMMISSIONERS

Selectboards have two responsibilities in the sale of malt and vinous beverages (i.e. beer and wine) and spirituous liquors. First, the voters of each town have the power to determine whether or not beer and wine or liquor may be sold in town through action of an annual or special town meeting. Five percent of the voters may petition the board to present one or both of the following questions for a vote:

- shall licenses for the sale of malt and vinous beverages be granted in this town?
- shall spirituous liquors be sold in this town?

If the board receives such a petition, it shall call a special meeting or present the questions at the annual meeting for the voters to decide. 7 V.S.A. § 161. The election requires special ballots and procedures, so towns involved in such election should consult the statutes. 7 V.S.A. §§ 161-165.

When a town or city has approved such sale, the selectpersons or the city council members become the liquor control commissioners. 7 V.S.A. § 166. The second duty then comes into effect, which is to administer and enforce the relevant law. With the approval of the state liquor control board, the local commissions may grant first and second class liquor licenses. 7 V.S.A. § 222. First class licenses are for the sale of beer and wine for consumption only on the premises and second class licenses are issued where beer and wine will be consumed off-premise. 7 V.S.A. § 2. (Third class licenses allow licensees to sell spirituous liquors in a hotel, restaurant, cabaret, club, boat or dining car and must be issued by the state board.)

The local liquor control commissioners may suspend a license they have granted, after notification and a hearing, if the licensee conducts the business in violation of V.S.A. Title 7, rules and regulations of the Liquor Control Board, or conditions issued as part of the license being granted. 7 V.S.A. §§ 167, 236. Note that § 167 allows the voters to authorize the local board to condition the issuance of a liquor license on compliance with any duly adopted local ordinance regulating entertainment or public nuisances.

The liquor control commissioners must operate under the laws and regulations governing the sale of alcoholic liquor, which are promulgated by State of Vermont Liquor Control Board. These rules are frequently updated. For further information, and to obtain the latest copy of the laws

and regulations, visit http://www.state.vt.us/dlc/enforcement/regulations, or contact the board at (800) 642-3134.

I. CONSERVATION COMMISSIONS

As an aid to planning and community development, the selectboard may vote to create a conservation commission as described in 24 V.S.A. Chapter 118. It may appoint three to nine members, each of whom must be a resident of town. Members may be removed from office for just cause and are entitled to a public hearing if they so choose.

A newly appointed commission "shall adopt by majority vote of those present and voting such rules as it deems necessary and appropriate...." (Note that the simple majority vote of those present here applies only to the organizational meeting and any further votes by the commission must conform to the general rule which requires a majority of the total board.) Meetings are subject to the open meeting law and a record of proceedings must be kept.

The purpose of the commission is to inventory and monitor town resources (including natural, scenic and recreational resources) and town lands that have, for example, special historical, cultural or architectural importance. The commission may act in an advisory capacity to the legislative board and may receive and manage money, grants, properties and other gifts. Money in a conservation fund may be carried over from year to year and must be used for conservation purposes only. Likewise, land, rights or other property acquired for conservation or recreational purposes may not be diverted to other uses without the vote of the town. The conservation commission may also work with other town boards, the district environmental commission and private organizations on matters affecting the resources under its purview. Finally, it may serve an educational function by creating and making available information about natural resources.

For more information about Vermont's conservation commissions, contact the Association of Vermont Conservation Commissions, 822 Center Road, Middlesex, VT 05602, or visit their website at http://www.avccvt.org.

CHAPTER 7
CHARTERS AND MERGERS

A. CHARTERS

1. **Introduction.** A local government may exercise only those powers expressly granted to it plus those necessarily implied therefrom. *Town of Brattleboro v. Nowicki*, 119 Vt. 18 (1955). Local governments derive their express authority to act from portions of the state constitution, from specific provisions in state statutes, and, in some cases, from a governance charter.

   Thirty-three cities and towns in Vermont currently have governance charters, Poultney has a special act that functions as a charter, and 46 villages have charters. In addition, all but two Vermont towns have a land grant charter issued by New Hampshire, New York or Vermont. Land grant charters simply define the boundaries of the city or town, while governance charters are, in effect, a constitution for the municipality that provides a framework for self-rule.

   Once a city or town has been granted a governance charter by the state, that charter becomes the primary source of power and structure for the local government. Where the charter provides for procedures other than those established by statute, the provisions of the charter will generally prevail unless the statute or charter specifically provides otherwise. The reason for this general principal is that a charter is a legislative enactment and, as such, it has the same status as a statute. When two statutes conflict, the more specific statute will prevail over the more general one. *Looker v. City of Rutland*, 144 Vt. 344 (1984); *Village of St. Johnsbury v. Thompson*, 59 Vt. 300 (1887). (The municipal charter, as a special law of the Legislature, will supersede the general law within such municipality.) Because the charter deals with the procedures a particular town must follow to govern, the charter is generally found to be more specific than a general statute enacted for the benefit of all local governments. In addition, 17 V.S.A. § 2631 states that "[w]here the charter of a municipality provides for procedures other than those established by [17 V.S.A. Chapter 55, dealing with local elections], the provisions of that charter shall prevail."

   Cities and towns choose to adopt charters for various reasons. Primarily, it gives the local government the flexibility to design a system of self-governance suited to its particular needs and concerns. A charter may also diverge from state law by allowing such things as voter initiatives and recall of elected officials, allowing local governments to fill in what they may perceive as gaps in state law.

2. **Forming Charters.** The state constitution permits the Legislature to "grant charters of incorporation." Vt. Const. Chapter 2 § 6. However, unlike states which permit "home rule" (self-governance without continued legislative control over the local government), the Vermont Constitution also provides for the continued control over the charter by the State Legislature. It provides that "[n]o charter of incorporation shall be granted, extended, changed or amended by special law, except for such municipal … corporations as are to be and remain under the patronage or control of the State." Vt. Const. Chapter 2 § 69.

   Curiously, prior to 1987 there was no provision in the statutes or constitution which enabled the voters of a local government to propose the adoption or amendment of a charter, or which

set out a procedure by which a city or town could vote to adopt a governance charter. Until then, only the selectboard or the city council could initiate such an action. However, in 1987, 17 V.S.A. § 2645(a)(1) was amended to state, in part, that "a proposal to adopt ... a municipal charter may by made by the legislative body of the municipality or by petition of five percent of the voters of the municipality." This empowers the voters of the local government to initiate a proposed charter for the General Assembly to enact. Although the remaining provisions of section 2645 refer only to the process by which charters may be amended, by implication, this procedure should be extended to the proposed adoption of a charter. In addition, the Legislature, in theory, could draft and grant a charter for a city or town without being requested to do so by the local government, and without being presented with a draft charter for enactment. However, principles of legislative restraint make this an unlikely method for the chartering of local governments. Finally, when two or more municipalities elect to merge, and such merger is approved by the General Assembly, their plan of merger becomes the charter of the consolidated municipality. 24 V.S.A. § 1485.

Most cities and towns which have adopted charters have either amended their land grant charter by adding governance provisions or have adopted a charter using the statutory procedure set out in 17 V.S.A. § 2645 and then submitted it to the Legislature for enactment. Since the Legislature has the blanket authority to grant governance charters, once a charter has been legislatively enacted, it is not legally relevant whether or by what procedure the town initially drafted and approved of the proposed charter.

3. **Amending Charters.** Seventeen V.S.A. § 2645 provides the process by which a municipality may propose charter amendments to the General Assembly. This same process should also be used when a town initially seeks to adopt a charter or when it wishes to repeal its charter.

   In order to request that the Legislature amend its charter, a majority of the legal voters of the municipality must have approved the amendment by an Australian ballot vote at an annual or special meeting properly warned for that purpose.

   First, a proposal to amend a municipal charter may be made either by the legislative body of the local government or by petition of five percent of the voters. An official copy of the proposed amendments must be filed with the city or town clerk at least ten days before the first public hearing, and copies must be made available to members of the public upon request.

   Next, the legislative body must hold at least two public hearings prior to the vote on the proposed charter amendments. The first public hearing must be held *at least* 30 days before the meeting at which a vote will be held. Proposals made by the legislative body may be revised by that body as a result of recommendations made at a public hearing, but such revisions must be made and posted no less than 20 days before the date of the meeting at which the vote will be held. Notice of the revisions must be posted in the same places as the warning for the meeting, and copies of the revisions must be attached to the proposal in the clerk's office for public inspection. 17 V.S.A. § 2645(a)(4).

   If the proposal to amend the charter was made by petition, the second public hearing must be held no later than ten days after the first hearing. After the warning and hearing requirements have been satisfied, the petitioned amendments must be submitted to the voters at the next annual meeting or next primary or general election in the form in which it was filed, except for technical corrections. 17 V.S.A. § 2645(a)(5). It appears that a petitioned amendment

must be presented to the voters as it was proposed and thus will be voted either "yes" or "no." If it is voted "no," then it is back to the drawing board for any proposed amendment.

Notice of the public hearings and of the annual or special meeting must be given in the same way and time as for annual meetings of the local government. Therefore, the meetings and hearings must be posted and published in accordance with 17 V.S.A. § 2641. Because the first hearing must be held at least 30 days before the annual or special meeting, and must be warned in accordance with 17 V.S.A. § 2641, the first hearing must be warned no later than 60 days (or earlier than 70 days) prior to the meeting at which the amendment will be considered. The second hearing must also be warned no later than 30 days or more than 40 days before it is to be held.

Once the town has voted to amend its charter, the municipal clerk must announce and post the results and, within ten days of the vote, certify to the Secretary of State each proposal of amendment, its origin and the procedure followed. The Secretary of State must file the certificate and deliver copies of it to the Attorney General, the Clerk of the House of Representatives, the Secretary of the Senate and the chairs of all committees concerned with municipal charters. The amendment will become effective upon affirmative enactment of the proposal, either as proposed or as amended, by the General Assembly. 17 V.S.A. § 2645.

4. **Repealing Charters.** Seventeen V.S.A. § 2645 authorizes a municipality to propose to the General Assembly the repeal of its charter by the same process as is described above for amendment.

B. MERGERS

1. **Introduction.** Twenty-four V.S.A. Chapter 49 authorizes cities, incorporated villages, special purpose districts and school districts to elect to merge. Adjoining municipalities within a town may merge with each other, or they may merge with the town. 24 V.S.A. § 1485. To successfully merge, these municipalities must either carefully follow the procedure set out in Title 24, chapter 49, or, if a special act exists authorizing the particular merger, they may proceed in accordance with the special act. 24 V.S.A. § 1487.

2. **Procedure for Merger.** The procedure for merger set out in Chapter 49 is as follows:

   a. The legislative bodies of each party to the merger must prepare a plan of merger, which must be approved by a majority of each body. 24 V.S.A. § 1482.

   b. The plan of merger must be approved by a majority vote by Australian ballot of each municipality concerned at a meeting duly warned for that purpose and held in each such municipality. 24 V.S.A. § 1485(a). Not fewer than 30 days prior to the meeting, copies of the plan of merger must be posted in three or more places in each of the areas involved.

      In addition, two public hearings in each of the areas involved must be held, at intervals of two weeks, the last of which shall be held not less than five days before the meeting at which the vote will be held. Notice of the hearings must be advertised in accordance with 24 V.S.A. § 1484.

   c. Within ten days after the municipalities have voted to adopt a plan of merger, the clerk or equivalent officer of the municipality into which merger has taken place must notify the Secretary of State of the merger. 24 V.S.A. § 1486.

3. **The Plan of Merger.** The plan of merger is a very important document. When it is approved by the voters and ratified by the General Assembly, the permanent provisions of the plan become the charter of the consolidated municipality. 24 V.S.A. § 1485. In order to seek ratification, the municipality must request that the secretary of state file the plan of merger and deliver copies of it to the attorney general, clerk of the House of Representatives, secretary of the Senate and chairs of all committees concerned with municipal charters, in accordance with 17 V.S.A. § 2645(c).

   The plan of merger must include "provisions relating to structure, organization, functions, operation, finance, property and other appropriate matters." In addition, the plan must include special provisions from the charters of the municipalities involved which the municipalities wish to retain as charter provisions of the consolidated municipality. Finally, the plan must provide that any area or group of voters in the consolidated municipality may elect to have special services provided to them not common to all of the voters in the municipality, so long as the costs of these services are born by the taxpayers receiving the services. 24 V.S.A. § 1483.

C. CONSOLIDATION

1. **Introduction.** Twenty-four V.S.A. Chapter 45 provides the mechanism for towns or parts of towns that desire to consolidate to do so. Towns may wish to consolidate for various reasons, the most common of which is governmental efficiency: it makes economic sense not to unnecessarily duplicate the expenses of local government.

2. **Procedure.** In order to consolidate, the selectpersons of one or all of the towns must appoint a committee to study the feasibility and desirability of consolidating such town or parts of the town with another town or towns or parts thereof. 24 V.S.A. § 1421. This committee must confer with the assistant judges of the county or counties within which the towns are located to study the feasibility and desirability of such consolidation. If the assistant judges decide that consolidation would be beneficial to the inhabitants of the areas proposed to be consolidated, and there is a reasonable possibility of such consolidation, they must suggest to the selectboard of the other town (or towns) that it appoint a committee to consider the proposed consolidation. 24 V.S.A. § 1422. Committees appointed upon request of the assistant judges must meet and confer with the committee of the town proposing consolidation. If the committees determine that consolidation would "promote the interests of the residents of the areas to be consolidated and that greater governmental efficiency would result," they must work together to draw up a detailed plan for consolidation. 24 V.S.A. § 1423.

   Once drawn up by the joint committee, the consolidation plan is submitted to the assistant judges for their approval. 24 V.S.A. § 1424. If the assistant judges approve of the plan they must notify the selectboards of the towns involved, which must then post the plan in three places in their town for three consecutive weeks and publish it in a newspaper once a week for three consecutive weeks. Within 30 days after publication, a town meeting shall be called in each town, on the same day, for voting on the proposal. Note that voting shall occur in each town "by ballot" and "the polls shall be open from 6:00 a.m. to 6:00 p.m." 24 V.S.A. § 1425.

The clerk of each town must certify the results of the vote to the county clerk who, if a majority in each town has approved of the consolidation plan, must certify the adoption of the plan to the Secretary of State who then reports to the General Assembly and submits the plan for its consideration. 24 V.S.A. § 1427. If the towns wishing to consolidate lie in more than one county, the assistant judges of each county must recommend to the secretary of state within which county the consolidated town should be included. 24 V.S.A. § 1430.

If the plan for consolidation is approved and the General Assembly establishes the new consolidated town, the county clerk must call a meeting of the qualified voters of the consolidated towns to elect a slate of town officers to serve until the next annual town meeting. 24 V.S.A. § 1428. The state treasurer acts as fiduciary for the consolidated towns and determines the outstanding bonds and bills and collects amounts of interest and principal due to be paid by such consolidated town. 24 V.S.A. § 1429.

3. **The Plan.** The joint plan for consolidation must set forth the boundaries of the areas to be consolidated, as well as scheduling, listing and assigning a fair market value to land, buildings and equipment owned by each town which will not be needed after consolidation. Land, buildings and equipment deemed necessary for the consolidated areas must also be scheduled and listed, along with the liabilities of each town. A balance sheet showing the true assets and liabilities of the consolidated town must be drawn up and included in the plan. 24 V.S.A. § 1423(a).

   The plan for consolidation may allow one or more of the towns to consolidate as a village within the consolidated town and it may provide that any zoning ordinances in effect or bonded debt in such town to will continue as village ordinances and obligations, respectively. Finally, any plan may also provide that school districts within the areas to be consolidated may be established as incorporated school districts within the consolidated town. 24 V.S.A. § 1423(b).

D. BOUNDARY LOCATION AND ALTERATION

When the selectboards of adjoining towns cannot agree as to where the boundary line is located between the towns, one of the selectboards may petition the superior court to appoint commissioners to locate the line. The court will then appoint three disinterested persons, one of whom shall be a surveyor, to hear the evidence and view the premises and then to recommend where the line should be established. 24 V.S.A. Chapter 47.

Where towns wish to alter existing town boundaries or where there is a petition to create a new town, the General Assembly shall follow the procedure in 2 V.S.A. § 17.

The establishment of village boundaries or the alteration thereof is governed by 24 V.S.A. §§ 1301-2.

CHAPTER 8
ANIMALS

Animals are a frequent cause of concern and complaints from the public. The state statutes discussed below govern many topics such as rabies control, licensing, and cruelty to animals. In addition, the legislative body of a municipality has the authority to adopt ordinances regulating the keeping of domestic pets and wolf-hybrids, and to enforce many of the state statutes regarding animals. The local board of health (selectboard plus the health officer) also has broad powers to identify public health hazards and to enforce local and state laws concerning such hazards.

A. DOMESTIC PETS AND WOLF-HYBRIDS

1. **Fees and Licenses.** Any person who owns or keeps a dog or wolf-hybrid that is more than six months old must annually, on or before April 1, have it registered with the town clerk in the town where the animal will be kept. The animal must be numbered, described and licensed on a form provided by the secretary of the Agency of Agriculture, Food and Markets, and must wear a collar, to which is attached the license tag issued by the town clerk. In order to have an animal registered, the owner must provide a certificate from a duly licensed veterinarian verifying that the animal has had pre-exposure rabies vaccine as required by 20 V.S.A. § 3581.

   When a person acquires a dog or wolf-hybrid after April 1 or owns a dog or wolf-hybrid which becomes six months old after April 1, he or she must register the animal within 30 days. When a timely application is submitted after October 1, the license fee is one-half of the normal fee. If the animal is not registered within 30 days, a penalty of 50% of the normal fee is assessed. 20 V.S.A. § 3582.

   A license issued anywhere in the state is valid throughout the state, so long as it is recorded by the clerk of the municipality in which the animal is kept. 20 V.S.A. § 3591.

   An animal from another state may be brought into Vermont for a period not to exceed 90 days if the owner possesses a certificate signed by a licensed veterinarian in the other state verifying that the animal has a current rabies vaccine, good for the entire 90-day period. 20 V.S.A. § 3587.

   Each year the selectboard must designate one or more people to keep a record of dogs and wolf-hybrids and whether they are properly vaccinated and registered. If an animal is not properly vaccinated and registered by May 30, the list of those animals shall be given to the selectboard. Owners shall be notified that unlicensed or unvaccinated animals may be destroyed. 20 V.S.A. § 3590.

   The legislative body has the authority to issue a warrant to impound and destroy any unlicensed dogs or wolf-hybrids within the municipality. The warrant must be in the form mandated by 20 V.S.A. § 3622 and shall command a police officer or constable "to impound and destroy in a humane way or cause to be destroyed in a humane way all dogs and wolf-hybrids not duly licensed according to law…." 20 V.S.A. §§ 3621-3622. The officer must take action within 90 days. Officers may be compensated and other expenses may be paid from the money received from licensing fees. 20 V.S.A. § 3624.

2. **Kennels.** The owner or keeper of two or more domestic pets (dogs, cats and ferrets) or wolf-hybrids four months of age or older kept for sale or breeding purposes must apply for a kennel permit. The permit must be displayed prominently on the premises and it must be renewed by April 1 each year or be subject to a late penalty. 20 V.S.A. § 3681. All other provisions of 20 V.S.A. Chapter 193, subchapters 1, 2 and 4 that are not inconsistent with Section 3681 also apply to the kennel permit.

   Kennels are subject to inspection by law enforcement officers, officials from the U.S. Department of Agriculture or humane societies and licensed veterinarians to ensure the animals are kept under sanitary and humane conditions, that there is no communicable disease among them and that there is no threat to the health and safety of people. A quarantine may be imposed if such problems are found to exist. If the conditions are not remedied or if diseased or quarantined animals are removed from the kennel, the owner may be subject to criminal penalties under 13 V.S.A. § 353(a)(1). 20 V.S.A. §§ 3682-3684.

   A separate statute also applies to owners or keepers of domestic pets and wolf-hybrids kept for breeding purposes. Twenty V.S.A. § 3583 provides for a special license which may be issued if the animals are housed in an enclosure that keeps the animals and others safe and if the animals are all properly immunized.

3. **Regulation of Dogs by Municipalities and Treatment of Vicious Dogs.** The legislative body has the authority to adopt an ordinance regulating the keeping of domestic pets and their running at large. 20 V.S.A. § 3549. Many towns have leash laws and "pooper-scooper" laws. Enforcement may be by the constable, animal control officer or other law enforcement officers. These officers are also responsible for enforcement of the state laws outlined below which regulate vicious dogs.

   a. **Animal Bites, Humans.** If a domestic pet or wolf-hybrid bites a person while the animal is off the premises of its owner and the victim requires medical attention, that person may file a written complaint with the legislative body. The complaint should include the time, date and place of the attack, the name and address of whomever was bitten, and other relevant facts. The legislative body shall respond within seven days by investigating the charges and holding a hearing. If the owner of the animal can be ascertained "with due diligence," he or she should receive notice of the time and place of the hearing and the facts alleged.

      After a hearing, the board shall order measures that will provide such protection as is deemed necessary. The order may require that the animal be disposed of in a humane way, muzzled, chained or confined. The order must be sent by certified mail, return receipt requested. Failure to comply with the order may result in penalties provided in 20 V.S.A. § 3550. 20 V.S.A. § 3546. If necessary, a search warrant may be issued to aid in locating and seizing a dangerous animal. 20 V.S.A. § 3551.

      When a domestic pet bites someone and is *suspected of having rabies*, the procedures described below under Section B, Rabies Control, must be followed.

      Enforcement of municipal ordinance provisions may occur in the Judicial Bureau (formerly the Traffic and Municipal Ordinance Bureau) or in the Superior Court.

      Any person may kill a domestic pet or wolf hybrid if that animal has attacked a person and it is necessary to kill the animal in order to stop the attack and where the animal is

not restrained, is not within an enclosure provided for it, or is on the premises of its owner. This sounds a little confusing, but what it really means is that if the attacked person is at fault (rather than the dog) because that person has invaded the dog's pen or its owner's property, the right to kill it does not exist under the statute.

b. **Animal Bites, Livestock.** When dogs (or wolf-hybrids) have "worried, maimed or killed" domestic animals, the owner of such animal may proceed against either the owner of the animals or against the town. The owner may also notify a selectperson within 24 hours of the damage. That selectperson shall investigate and appraise the damage. If he or she finds that it is more than $20.00, then the total should be appraised by that board member and two disinterested persons whom he or she may appoint. The board shall issue an order to the treasurer to pay for all or part of the damage. The board may also order that the dogs that caused the damage be killed. If the selectboard fails to act, the damaged party may recover in civil action. The town may also recover damages from the owner of the dog via a civil action. The board may also offer a bounty of $5.00 for any dog killing or worrying sheep. 20 V.S.A. §§ 3741-3749.

   A domestic animal may be killed when such killing is reasonably necessary to prevent injury to an animal or fowl that is being attacked by the animal. 20 V.S.A. § 3545.

B. RABIES CONTROL

Rabies is a viral disease that is usually spread by animal bites. It is currently present in Vermont primarily in bats, raccoons and foxes. Humans, domestic pets and many other animals may become infected through exposure to infected animals. A "rabies hotline" is available at (800) 4 RABIES (800-472-2437). This service is a cooperative effort between the State Departments of Health and Fish and Wildlife and the federal Fish and Wildlife Service. It should be the first number called with a general rabies question, especially those involving wildlife.

Broad responsibilities and powers are given to the commissioners of the Agency of Agriculture, Food & Markets and the Departments of Fish and Wildlife, and Health to work with towns in case of a rabies outbreak. Affected areas may even be quarantined. 20 V.S.A. §§ 3801-3803.

An effective preventive vaccine is available and required for all domestic pets (dogs, cats and ferrets). There is some question as to the efficacy of the vaccine for wolf-hybrids. However, until a separate vaccine is approved for them, owners are required to have their wolf-hybrids immunized just as other pets. Generally, the vaccine must be administered by a licensed veterinarian. However, in the case of feral felines, a non-veterinarian may administer the vaccine. As mentioned above in Section 1, Fees and Licenses, a current rabies vaccine certificate is required in order to license dogs and wolf-hybrids. 20 V.S.A. §§ 3581, 3581a. The commissioner is required to facilitate reduced-cost rabies vaccine clinics around the state, and volunteers helping with such clinics are protected from liability associated with their clinic work. 20 V.S.A. §§ 3812-3813.

Any domestic pet or wolf-hybrid may be confined or impounded when:

- it is suspected of having been exposed to rabies.
- it is believed to have been attacked by a rabid animal.
- it has been attacked by a wild animal.

- it has been running at large in violation of any provision of 20 V.S.A. Chapter 193, Subchapter 5.
- it has an unknown rabies vaccination history.

The owner of the impounded animal, if known, shall be notified directly, if possible. If the owner's address is unknown, notice may be posted as prescribed in the statute. 20 V.S.A. § 3806. When a proper official "reasonably suspects" that an animal impounded under Section 3806 has been exposed to rabies, attacked by a rabid animal or has been running at large in violation of the law, he or she shall order the animal killed. If it is not reasonable to suspect actual exposure to rabies, the official may deliver the animal to its owner. However, if the owner cannot be found or it is impractical to impound or confine the animal, the officer may order it killed. 20 V.S.A. § 3807.

If a pet is suspected of exposing a human or another animal to rabies, it shall be managed under the relevant statute and the rules established by the Health Department. If *any* wolf-hybrid (even one vaccinated against rabies) bites or exposes a human or animal to rabies, it shall be killed and the head sent to the Health Department for testing for the presence of rabies. 20 V.S.A. § 3807(c). Note that *the legislative body of a municipality or an official designated by it* is responsible for enforcement of the provisions in 20 V.S.A. § 3807.

Any person may kill a suspected rabid animal, which attacks a person or other animal, and he or she may not be held liable for any damages for such killing. 20 V.S.A. § 3809. The carcass of any animal suspected of having had rabies may be disposed of by incineration. 20 V.S.A. § 3811. In some cases, the head of the suspected animal must be sent for testing and should not be incinerated.

C. OTHER ANIMALS, GENERALLY

A person who knowingly permits cattle, horses, sheep, goats or swine to run at large in the following areas, without the permission of the selectboard, shall be fined:

- in a public highway or yard belonging to a public building, not less than $3.00 nor more than $10.00. 20 V.S.A. § 3341.
- in a public park, common or green, not less than $5.00 nor more than $25.00. 20 V.S.A. § 3342.
- in a yard of a townhouse, church or schoolhouse which is properly enclosed, not less than $3.00 nor more than $10.00. 20 V.S.A. § 3343.
- in a properly enclosed burial ground. 20 V.S.A. § 3344.

Each town must maintain at least one pound for the impounding of certain animals, such as those found running loose or causing damage. The pound may be in another town. Failure to maintain a pound for six months or longer calls for a fine of $30.00. 20 V.S.A. §§ 3381-3382.

The selectboard may, with permission of the owner of lands affected, destroy "fur-bearing animals" (e.g. beavers) in order to protect town highways and bridges. 10 V.S.A. § 4828. An opinion of the Vermont Attorney General, interpreting prior law, said that selectboards could destroy beavers and disturb their dams only if there was "an actual proximate threat to the safety of highways and bridges." That same opinion also said that selectboards could delegate this authority to "peace officers." (See Annotations under 10 V.S.A. § 4828.)

D. CRUELTY TO ANIMALS

In 1997 the Legislature passed 13 V.S.A. Chapter 8, entitled *Humane and Proper Treatment of Animals*. Improper or cruel treatment or neglect of animals is a crime, and a person found guilty of such a crime may be jailed or heavily fined, as well as ordered to pay costs, undergo psychiatric counseling, forfeit the right to own animals, etc. 13 V.S.A. § 352.

The importance of this subject to selectboards is that the local board of health is an "officer" or "humane officer," as defined in subsection 351(4), and has the authority to enforce the law prohibiting cruelty to animals. This includes authority to accept and care for animals alleged to have been mistreated, obtain a search warrant and seize animals, rescue an animal in imminent peril, arrange for euthanasia of a severely injured animal, and file motions in any ensuing criminal action. 13 V.S.A. § 354. The health officer and the board of health may enlist the help of law enforcement officers in carrying out these duties. 18 V.S.A. § 617.

CHAPTER 9
ORDINANCES and REGULATIONS

A. AUTHORITY AND PURPOSE

Local control exists in Vermont exclusively by license: a municipality may do only what the Vermont Legislature has granted it the authority to do. As a result, the areas in which a municipality can enact ordinances are narrowly defined by statute or municipal charter, leaving a town virtually no latitude to invent new subjects of legislation. The authority of municipalities to set local speed limits and parking rules, to define enforceable standards for zoning districts, and to regulate dogs – to name only a few of the many fit subjects for local legislation – exists exclusively by ordinance or bylaw. In many cases, without an ordinance, a town would have no authority to act.

An ordinance is "an expression of the municipal will, affecting the conduct of the inhabitants generally, or of a number of them under some general designation." *City of Barre v. Perry & Schribner*, 82 Vt. 301 (1909). Improperly drafted or enforced, a local ordinance can do great, inadvertent harm. Alone, it cannot solve all of a community's problems. But a well-written and effectively enforced ordinance that solves a particular problem or situation can be a significant community asset. An ordinance can help guarantee equal protection and due process of the law to every person in town. It can also articulate a community's goals and aspirations, and bend practice in the direction of policy.

Understanding when a municipality can enact an ordinance, how the enactment and enforcement processes work, and how the courts have treated local ordinances and bylaws is critical for selectboards and other local legislative bodies. The penalty for not enacting ordinances correctly is reversal by the courts and criticism at home by those who have relied on the board's expertise.

1. **General Legislative Powers of Municipalities.** The constitutional basis for municipal ordinances and bylaws is Chapter I, Article 2 of the Vermont Constitution, "That private property ought to be subservient to public uses when necessity requires it." This authorizes the use of police power for the purpose of protecting the public health, safety, and welfare. This is the power that requires you to keep your dog on a leash in a town with a dog control ordinance, and that justifies fines for jaywalking and speeding.

   State statute is the source for all local legislative authority in most municipalities. In some towns, all cities, and an occasional village or fire district, the municipality enjoys enhanced legislative authority by municipal charter, which is special legislation adopted by the General Assembly specific to that municipality. (See Chapter 7, *Charters and Mergers*.) Here we limit our discussion to general powers.

   The subjects of local legislation are varied, and scattered through many different titles of the Vermont Statutes Annotated (V.S.A.). The central source of power is 24 V.S.A. § 2291, which includes a list of 18 different subjects. Examples include "to set off portions of public highways of the municipality for sidewalks and bicycle paths and to regulate their use" and "to compel the cleaning or repair of any premises which in the judgment of the legislative body is dangerous to the health and safety of the public." Beyond this list, the authority to adopt ordinances is found in various locations throughout the V.S.A.

2. **The Relationship Between Ordinance and State Law.** The most important rule of construction in understanding the relationship between state law and ordinance is the primacy of higher law. The municipality may not enact ordinances unless the Legislature has expressly granted it the authority to adopt local legislation on the subject. Where the state law establishes limits on the ordinance or bylaw, the municipality must stay within those limits.

   In some cases, state law specifically overrules existing ordinances. When Vermont's billboard law took effect in 1968, for instance, the statute expressly superseded any inconsistent local ordinance on the same subject. 10 V.S.A. § 505. On the other hand, some state programs expressly give way in the case of inconsistent local legislation. For example, no Act 250 permit may be issued or denied by a district environmental commission if it is "contrary to or inconsistent with a local plan, capital program or municipal bylaw ... unless it is shown and specifically found that the proposed use will have a substantial impact or effect on surrounding towns, the region, or an overriding interest of the state and the health, safety and welfare of the citizens and residents thereof requires otherwise." 10 V.S.A. § 6046.

   Finally, if a bylaw is authorized by municipal charter, it has the effect of a special law of the Legislature within the limits of the municipality and supersedes any general law existing on the same subject "for the charter giving the village power to pass the bylaw inconsistent with and repugnant to the general law, by necessary implication, operated to repeal the general law within the territorial limits of the village, on the principle that provisions of different statutes which are in conflict with each other cannot stand together; and, in the absence of anything showing a different intent on the part of the Legislature, general legislation upon a particular subject must give way to later inconsistent special legislation on the same subject." *St. Johnsbury v. Thompson*, 59 Vt. 300, 309 (1887).

   In the *Thompson* case, the higher law was not the general state statute, but the charter, which itself is a form of statute for the village alone. In most cases, if there is a conflict between statute and ordinance, the ordinance must give way, unless the statute expressly authorizes the ordinance to be stricter or more severe. Sometimes the statute has to be read with the ordinance for the latter to make sense. *Rutland Cable T.V. v. City of Rutland*, 122 Vt. 162, 166 A.2d 191 (1960).

3. **The Relationship Between Ordinance and Collective Bargaining Agreements.** The law on municipal labor relations includes the following statement: "In the event any part or provision of a collective bargaining agreement is in conflict with any ordinance ... adopted by the municipal employer or its agents, the lawful vote of the legislative body approving the written agreement shall validate the collective bargaining agreement and shall supersede such ordinance ..." 21 V.S.A. § 1725. This section does not mean to place the collective bargaining process above ordinances involving health or environmental concerns. Rather, it applies to municipal policies relating to personnel matters, including sick leave, vacation time, and the like. In the case of a conflict, the agreement prevails. See 24 V.S.A. § 1121 (authority to adopt personnel rules).

   State law also recognizes that a municipal policy, presumably on personnel matters, gives way in the case of voluntary submission of a municipality and its employee labor organization to binding arbitration to settle a grievance or controversy. 21 V.S.A. § 1734(b).

4. **Drafting Ordinances**. In drafting an ordinance, do not neglect the hard work other municipalities have put into their ordinances. A few words with the right person, along with a

copy of a good sample from another community, can save you weeks of frustration. Once you start to draft the ordinance itself, return to your statutory source of authority more than once during the process, always asking whether what you propose is justified by the statute or charter. If your charter is insufficient, amend it; if general law is insufficient, adopt a charter. The possibilities of ordinance invention are as yet unexplored. Indeed, many local ordinances show a notable lack of imagination, although that may be a necessary characteristic of the police power at work.

Seek competent legal counsel before promulgating the ordinance. It is money well spent in comparison to legal fees from a challenge to the municipality's authority to act in the way the ordinance proposes. The VLCT Municipal Assistance Center staff is available to review your draft ordinances, and also has an extensive collection of sample ordinances on different subjects from municipalities around the state. Finally, listen to the public at all costs. There is nothing so unpleasant as a special election to disapprove an ordinance that the board has drafted and approved.

Organize your ordinances and bylaws. They should all be kept in a book, perhaps a three-ring binder, where any person can find them while visiting the town office. A backup copy of the same notebook for archival purposes only will help preserve these important records of the town.

B. ORDINANCE ADOPTION AND PERMISSIVE REFERENDUM

The basic law on the adoption, amendment and repeal of municipal ordinances is 24 V.S.A. §§ 1971-1976. Please read these sections carefully, in addition to reviewing our discussion of them below. Also note that the statutory authority for the adoption of an ordinance occasionally includes additional steps for the adoption process. The law on adopting building ordinances, for instance, includes a mandatory public hearing and notice period. With these exceptions in mind, let's review the basic process for adopting an ordinance.

The process starts with the drafting of the ordinance, and its review by the legislative body. The body then *adopts* the ordinance formally, by a majority vote of its members, ensuring that the action and a copy of the proposed ordinance are entered in the minutes of the meeting. Adoption in this context is not the same as making the ordinance effective – that comes after a few more steps.

The next step is public notice. The ordinance has to be posted in five conspicuous places within the municipality. The full text, or a concise summary including a statement of purpose, principal provisions, and table of contents or list of section hearings, must be published in a newspaper of general circulation not more than 14 days following action by the legislative body. The notices, published and posted, should include a reference to a place where the full text of the ordinance can be found; the name, address, and telephone number of a person who can answer questions about the ordinance; and an explanation of how voters can petition to disapprove the ordinance. 24 V.S.A. § 1972(a). The explanation might say, for instance, "This ordinance was adopted on [give date]. It will take effect on [name the day 60 days from the first date], unless a petition signed by at least five percent of the voters of [name municipality] is filed with the municipal clerk by [name the day 44 days from the first cited above], asking for a vote to disapprove the ordinance. If a petition is received, the [municipal legislative body] will warn a special meeting and the voters may vote on that question." 24 V.S.A. § 1973.

Voters equal to five percent then have until (and including) the 44th day following action by the legislative body to petition for a vote to disapprove the ordinance. The legislative body receiving such a petition must warn the meeting within 60 days, or if the annual meeting is within the 60-day period may warn the question for a vote at the annual meeting. 24 V.S.A. § 1973(b) and (c).

Voting would be in the traditional, open-type town meeting, unless the municipality has voted to use the Australian ballot system for public questions. 17 V.S.A. § 2680. In either case, two copies of the proposed ordinance must be posted in each polling place during the hours of voting and copies made available upon request (and presumably without a fee) to voters at the polls. If an Australian ballot is used, there is no need to reprint the entire ordinance or amendment on the ballot. A warning (and ballot) would be sufficient if it asks this question: "Shall the voters of [name of municipality] disapprove the proposed [name] ordinance?" Asking to disapprove obviously is more complicated than asking to approve, but the language in the statute is quite specific on this. 24 V.S.A. § 1973(d). If there is a petition and the ordinance is voted on, it takes effect on passage if the voters fail to disapprove it by a majority vote. If disapproval is their choice, its life ends on the day of the vote.

Although the petition process is central to the ordinance adoption process, a petition cannot legally require selectboards to propose an ordinance, its amendment or repeal. The initial decision on whether to adopt or not appears to reside entirely within the discretion of the selectboard. Selectboards can, of course, be persuaded by political pressure or common sense arguments to adopt, amend, or repeal an ordinance.

C. ENFORCEMENT

1. **Generally.** Municipal ordinances other than zoning bylaws and traffic offenses have historically been within the jurisdiction of the district courts. Like other crimes, violations of local ordinances were usually prosecuted by the state's attorney or attorney general, although in special cases a town grand juror or town attorney acting in his or her behalf was authorized to prosecute violations of ordinances, with the express consent of the state's attorney. Since 1994, enforcement of municipal ordinances has been through the Judicial Bureau. The law now allows municipalities to enforce their civil ordinances by writing tickets. If a citizen chooses to contest the ticket instead of paying the fine or waiver fee, the ticket complaint is heard by the Judicial Bureau.

   The Judicial Bureau was created to increase the options available to municipalities seeking to enforce their bylaws, as many were frustrated in their efforts to have overburdened state's attorneys prosecute local ordinance violations. To take advantage of the Bureau, selectboards must designate each of their ordinances (except parking) as civil or criminal and set a schedule of civil penalties and waiver fees. Specially designated local officials ("issuing officials") may issue tickets to the individuals and businesses they believe are in violation of the municipal ordinances.

   In the course of investigating a possible ordinance violation, an issuing official may not conduct a warrantless search of private property. The issuing official may, however, visit all of the publicly-traveled portions of the property. (A good test to determine whether a portion of the property is publicly-traveled is whether a visitor, mail carrier or delivery person would be welcome or expected at that location.) If, from the publicly-traveled portion of the property, the issuing official can see a violation or can see indications that a violation is

happening in the private portion of the property, there is probably sufficient evidence of a violation to issue a municipal complaint. Health officers should also consult 18 V.S.A. § 107, which grants them additional authority to make inspections to detect violations of health ordinances, but does not exempt them from the requirement to obtain a search warrant if necessary. 18 V.S.A. § 121. Search warrants are available for other ordinance violations according to the procedure set out in 13 V.S.A. § 4701.

Once issued, if a municipal complaint is contested, a municipal official may represent the town in the hearing before the Bureau as it is designed to operate without attorneys. Assuming the Bureau enters judgment for the municipality, the person found in violation of the municipal ordinance has up to 20 days to pay the penalty to the Bureau. The Bureau will remit the penalties to the town monthly, less a $6.00 per ticket administrative fee. Appeals from a Bureau decision are taken to district court. For more information about the Judicial Bureau, please consult the VLCT Municipal Assistance Center's *Ordinance Enforcement Handbook*.

For matters relating to zoning violations, the administrative officer is authorized by law to give alleged offenders seven days' notice by certified mail that they are violating the bylaws, and then to take them to court to assess the $100.00 per day fine. All fines are then paid over to the municipality whose bylaw has been violated. See 24 V.S.A. § 4451(a) for details of the notice to violators. The zoning administrator may also choose to pursue the offender into court with an action to enjoin any development contrary to the bylaws. 24 V.S.A. § 4452. Each of these two decisions may be appealed to the zoning board, and from there to the Environmental Court. 24 V.S.A. §§ 4471. Certain, but not all, zoning violations may be suitable for enforcement in the Judicial Bureau. Please consult your town attorney or the VLCT Municipal Assistance Center for guidance on zoning enforcement in the Judicial Bureau.

Whenever a court hears a case in which a municipal ordinance is alleged to be unconstitutional, the municipality must be served and is entitled to be heard; whenever the validity of a municipal ordinance is at issue, a municipality has a right to be made a party. 12 V.S.A. § 4721. On the other hand, the courts cannot legally take judicial notice of an ordinance as they can of a state statute. An ordinance must be offered into evidence. *Hebert v. Stanley*, 124 Vt. 205, 201 A.2d 698 (1964); *State v. Pelletier*, 123 Vt. 271, 185 A.2d 456 (1962).

2. **Presumption of Validity.** When a bylaw or ordinance is challenged, the municipal ordinance is given the benefit of the doubt by the courts. "When an ordinance is passed relating to a subject matter within the legislative power of the municipality, every reasonable presumption is made in favor of its validity. It is not to be adjudged unconstitutional without clear and irrefragable evidence that it infringes the paramount law." *Brattleboro v. Nowicki*, 119 Vt. 18, 117 A.2d 259 (1955). The Legislature has been no less generous. For instance, in the law relating to traffic offenses, the following language appears: "Testimony of a witness as to the existence of a traffic control sign, signal, or marking, or sign establishing a speed zone, shall be prima facie evidence that any such traffic control device existed pursuant to a lawful statute, regulation, or ordinance and that a defendant was lawfully required to obey the directions of such device." 23 V.S.A. § 2206(b).

This presumption is also reflected in the way the law handles procedural problems in the adoption and amendment of zoning bylaws. The law provides that "A certificate of the clerk of a municipality showing the publication, posting, consideration, and adoption or amendment of a plan, bylaw, or capital budget or program shall be presumptive evidence of the facts as they relate to the lawful adoption or amendment of that plan, bylaw, or capital budget or program, so stated in any action or proceeding in court or before any board, commission, or other tribunal." 24 V.S.A. § 4447. It also provides for a statute of limitations preventing any challenge of bylaws on purported procedural defects after "two years following the day on which it would have taken effect if no defect had occurred." 24 V.S.A. § 4483.

3. Challenges to Ordinances.

a. Reasonable Fees. A regulatory ordinance will be struck down if it requires the payment of "excessive" fees. An excessive fee is one whose sole purpose is to raise revenue, and does not bear a real and substantial relationship to the public health, safety, welfare, and convenience. *Champlain Valley Expo. v. Vill. of Essex Jct.*, 131 Vt. 449, 309 A.2d 25 (1973). Note that a fine or penalty for the violation of a regulatory ordinance can be designed to punish and deter future violations, so there is no similar limit on the penalty amounts.

b. Reasonableness. In *Burlington v. Jaycee, Inc.*, 130 Vt. 212 (1972), a city ordinance prohibiting eating establishments from selling food and beverage between 1:30 a.m. and 5:30 a.m. was challenged by a restaurant owner on the grounds of reasonableness. The court worked hard to find a reason to support it, but in the end did, claiming reduced noise and the need to maintain order, with only a minimal impact on the defendant's business. The "classification must not be purely arbitrary or irrational, but based upon a real and substantial difference, having a reasonable relation to the subject of the particular legislation." The standard of review is whether the ordinance is palpably unreasonable and arbitrary. Is there no reasonable basis on which to rest? Only if there is none will an ordinance fail to pass muster.

There is always a question about how ordinances should be read in light of changed circumstances after their enactment. Shortly after automobiles became commonplace, the owner of a car leasing company argued he did not need a license as a "hackman," since the licensing ordinance was written before there were automobiles. The court was unimpressed, however, finding the nature of the service of carrying passengers for a fee consistent, whether a carriage and horses or a motor vehicle were being used for the conveyance. *State v. Jarvis,* 89 Vt. 239 (1915).

When Burlington tried to argue that its own ordinance could be read to justify its use of electric power poles owned by a private utility, however, the court was not as willing to support its decision. The court concluded that if it were to read the ordinance in that way, it would be unconstitutional. The action of the city would constitute a taking without just compensation. The court saw its duty as saving the ordinance, even if that meant giving it a different meaning from what the city alleged. "[Saving the ordinance] can be accomplished by holding that, so far as poles already in the streets were concerned, the ordinance did not contemplate a use for purposes so unlike that then enjoyed by the city

as the use now claimed would be." *Burlington L. & P. Co. v. City of Burlington,* Vt. 27 (1918).

c. **Constitutional Issues.** There are a number of federal constitutional provisions that have an impact on municipal regulatory authority. For example, the Fourteenth Amendment Due Process and Equal Protection Clauses prohibit ordinances that are too broad or overly vague, or which unlawfully discriminate against a particular class of individuals, or treat one group differently than others with no rational basis. In addition, the First Amendment limits the degree that a regulation may abridge an individual's freedom of speech or association; the Fifth Amendment prevents the taking of private property without just compensation; and the Commerce Clause prevents an ordinance from unduly interfering with interstate commerce.

   In at least two cases, municipal ordinances have been struck down or declared invalid as applied based on the power of the First Amendment to the U.S. Constitution. The Rutland City peddler ordinance that prohibited selling pamphlets without a license was held invalid because it violated the right of freedom of the press, as guaranteed by the First and Fourteenth Amendments to the U.S. Constitution. *State v. Greaves,* 112 Vt. 222 (1941). In 1987, a Burlington City ordinance required all newspapers being sold out of street corner vending machines to pay a $5.00 per week fee to the city. The court quickly struck down the ordinance as invalid, saying it was standardless and conferred excessively broad authority on city officials. *City of Burlington v. New York Times Co.*, 148 Vt. 275, 282, 532 A.2d 562 (1987).

d. **Too Much Discretion.** The leading ordinance case in Vermont judicial history involved an ordinance that gave no standards on how the legislative body could determine who should qualify for a license to conduct a junk business. *Village of St. Johnsbury v. Aron*, 103 Vt. 22 (1930). The court found the ordinance invalid because of the wide discretion it left in the hands of the trustees. "No rules are laid down for the guidance of the trustees; they are not required to consider the personal fitness of the applicant, the propriety and convenience of his location or premises or any other thing in granting or withholding permission to carry on the business." The question of "[w]hether or not the license is to be granted lies wholly in the discretion of the trustees and this discretion they may exercise arbitrarily and for personal and private reasons." *Village of St. Johnsbury v. Aron,* 103 Vt. 22 (1930).

Keeping these guidelines and potential challenges in mind as you draft your ordinance will result in an ordinance that is less vulnerable to legal challenge. If you have any questions about the provisions of a draft or existing ordinance, please contact the VLCT Municipal Assistance Center.

CHAPTER 10
HIGHWAYS AND BRIDGES

A. INTRODUCTION

As any selectperson knows, the condition of town roads is the source of much discussion among town citizens – especially during mud season and following the winter's biggest storm. Roads also dominate discussion at many selectboard meetings, as Vermont statutes place town highways "under the general supervision and control of the selectmen ... [who] shall supervise all expenditures." 19 V.S.A. § 303.

The specific duties and responsibilities of the selectboard regarding roads are enumerated in 19 V.S.A. § 304. This section lists 23 different areas of responsibility, from the broad taking of "any action consistent with the provisions of law which are necessary for or incidental to the proper management and administration of town highways" to the specific "receive grant funds and gifts" to be used toward town highway maintenance.

It is worth noting, too, that in many of Vermont's smaller municipalities, the town road crew makes up all or most of the town's paid staff. This draws the selectboard into the important areas of personnel management and workplace safety, in addition to road repair and bridge maintenance. For more information, consult the VLCT Municipal Assistance Center's *Highway Handbook* (2001).

B. TOWN HIGHWAYS: CLASSES 1, 2, 3 AND 4

Town highways are divided into four classes (1, 2, 3 and 4), which determine maintenance requirements and state funding. For example, Class 1, 2 and 3 roads must be kept "in good and sufficient repair during all seasons of the year" but Class 4 highways need only be maintained to the extent required by "the necessity, ... public good and ... convenience." 19 V.S.A. § 310. The State of Vermont appropriates highway funds for Class 1, 2 and 3 highways and their bridges, 19 V.S.A. § 306, but these funds are conditioned on the town meeting certain maintenance standards, and funds may be withheld or returned by the town if it fails to meet the standards. 19 V.S.A. §§ 302(b), 308. (See Section H below.)

In addition to the four classes of town highways, another type of town right-of-way is the town trail. State statutes define a trail as "a public right of way which is not a highway." A trail may be an old town highway, 19 V.S.A. § 775, or it may be a new right-of-way laid out by the selectboard, 19 V.S.A. § 301(7). Towns are not responsible for any maintenance on trails. 19 V.S.A. §§ 301(c), 302 (a)(5).

C. CONDEMNATION

The selectboard has the authority to lay out a new town highway or alter an existing one, 19 V.S.A. § 304(12), two actions that usually involve the condemnation, or taking, of private property. The request to lay out or alter a road may be initiated by petition of five percent of town voters or landowners, or by the selectboard on its own motion. 19 V.S.A. § 708. (See also Section D below.)

Although the term "condemnation" is not found in the statutes that deal with laying out or altering town highways, the sense of these statutes is that the selectboard has the authority to take land "for the public good, necessity and convenience." 19 V.S.A. § 710. If the board determines that a new, expanded or rerouted highway is necessary for the public good, it must next decide if the landowners affected by the change are entitled to damages. If so, the board must "pay or tender to him or her, damages as the selectmen determine reasonable." 19 V.S.A. § 712. Such taking and payment of compensation for damages constitutes actual condemnation.

For guidance on the meaning of "necessity" and "damages" see 19 V.S.A. § 501. Though this chapter of the statutes deals with the State of Vermont Transportation Board, state highways, and condemnation, it is a helpful reference during the process of laying out or altering town highways.

As a final step in the condemnation process, the selectboard "shall fix ... the time within which the owner of the lands taken shall remove his or her buildings, fences, [etc.]." 19 V.S.A. § 713.

The landowner or other interested person has several remedies if he or she is dissatisfied with the selectboard's decision. First, he or she may appeal the award for damages to "disinterested persons mutually selected" or to the district or superior court. 19 V.S.A. §§ 725-726, 740. Second, if he or she objects "to the necessity of taking the land, or ... with the laying out, altering or resurveying of the highway ..." he or she may apply to the superior court for relief. 19 V.S.A. § 740. An appeal of the amount of damages will not interfere with beginning work on the highway. However, an appeal as to the necessity of the taking of the land or the correctness of the plan generally will stay the opening of the highway until the court renders its decision. 19 V.S.A. § 743.

Interestingly, there is a flip side to the condemnation powers of the selectboard. In 19 V.S.A. §§ 750 et seq., persons who are dissatisfied with the selectboard's decision not to lay out, alter, build or open a new highway may apply to the superior court for relief.

D. LAYING OUT HIGHWAYS

The authority to lay out, alter, classify or discontinue town highways is given to the selectboard in 19 V.S.A. § 304(a)(12). The procedure for each option is roughly the same. 19 V.S.A. §§ 708 et seq.

As noted in Section C above, proceedings to create or change a town highway may be initiated by the selectboard or by a petition signed by "persons who are either voters or landowners, and whose number is at least five percent of the voters, in a town." 19 V.S.A. § 708. The selectboard's next step is to set a time and date for inspection of the premises and for a hearing. Notice requirements for the hearing are fairly extensive and are spelled out in 19 V.S.A. § 709. The hearing is quasi-judicial, as defined in 1 V.S.A. § 310(5). Following the hearing, the board has 60 days in which to make a decision based on "the public good, necessity and convenience of the inhabitants of the municipality." 19 V.S.A. § 710. It is worth noting that regardless of the origin of the request, it is ultimately the selectboard's decision whether or not to change the status of a town highway.

Until recently, the board's decision in these matters was treated with great deference by the courts. However, in 1991 the Vermont Supreme Court upheld a superior court decision that required a town to upgrade a Class 4 road even though the selectboard had decided not to.

Hansen v. Town of Charleston, 157 Vt. 329 (1991). That decision threatened to have severe financial implications for towns since it meant that courts could force towns to spend thousands of dollars on road construction and upgrading. However, much of the financial impact of that case was mitigated by a subsequent amendment to 19 V.S.A. § 711 that provides that the town may require the petitioner to bear the cost of upgrading a road and may require that payment to be made within a stated time.

Class 4 roads are often the subject of petitions to upgrade, as more and more landowners build on them or seasonal homes located on Class 4 roads become occupied year round. Many towns have adopted a Class 4 road policy that sets forth the type and extent of maintenance the town will do on Class 4 roads. (Work ranges from minimal repairs to bridges and culverts in the summer to more extensive, year round grading and snowplowing.) It may also state the terms upon which the selectboard will consider reclassifying the road to Class 3 status. A Class 4 road policy ensures that the town treats all town residents who live on Class 4 roads equally and that people who seek to move to or build on a Class 4 road are aware of the level of road maintenance they can expect from the town, if they inquire.

A good Class 4 road policy does not mean a town won't be petitioned to upgrade a Class 4 road, or be sued over the road's maintenance. It will, however, go a long way toward clarifying the town's position in any such proceeding. Note that the selectboard should reconsider the Class 4 road policy each year. A new selectboard is not bound by the previous board's policy and may change it to reflect what the board believes is "the public good, necessity and convenience of the inhabitants of the municipality." Contact the VLCT Municipal Assistance Center (800-649-7915) or the Vermont Local Roads Program (800-462-6555) for sample Class 4 road policies.

If the selectboard decides in favor of laying out a new highway or altering an existing one, the town may have to pay damages to persons through whose land the road passes or abuts. 19 V.S.A. §§ 808 et seq. (See also Section C above.) Laying out or altering highways and bridges that lead from one town to another is addressed in 19 V.S.A. §§ 790 et seq.

Questions frequently arise concerning the status of roads and streets created in private developments. Even though town planning and zoning authorities have approved developments and plats, Vermont law states that new streets and highways "shall be deemed to be ... private ... until formally accepted by the municipality as a public street or highway by ordinance or resolution of the legislative body." 24 V.S.A. § 4463(c). That said, there are some actions that, if taken by a town on a regular basis, can blur the distinction between a private and a public road. It is worth a note and warning that if the town appears to take over some of the private road's maintenance by activities such as plowing snow and fixing potholes, it may be deemed to have acquired the road by "dedication and acceptance." In this case, the town might have inadvertently taken on a new street or highway with all of its costs and liabilities.

When petitioned by citizens to take over a previously private road, many selectboards refer to their town's highway acceptance policy, or general highway ordinance that include standards which must be met (and paid for) by the owners of the road before the town will take it over. The Vermont Local Roads Program (c/o St. Michael's College, One Winooski Park, Colchester, VT 05439, telephone 800-462-6555) is a good source of technical standards and advice when developing a highway acceptance policy. You can also visit the Vermont Local Roads website at http://personalweb.smcvt.edu/vermontlocalroads/welcome_home_page.htm.

The selectboard may also discontinue town highways. 19 V.S.A. §§ 701, 771. The highway can be totally discontinued, in which case the right-of-way reverts to the owners of adjoining land, or the highway may be designated "as a trail, in which case the right-of-way shall be continued at the same width." 19 V.S.A. § 775. In each case, the selectboard must weigh the costs (upkeep, liability, etc.) to the town of keeping ownership of the right-of-way with current and future benefits the right-of-way confers on its citizens (recreational use, access to remote areas of town, use by loggers and farmers, suitability for future growth, etc.). Note, too, that when the selectboard decides to discontinue a highway, it must notify the commissioner of the Department of Forests, Parks and Recreation of its decision. The commissioner may then decide to designate the discontinued highway as a trail.

If your town has a town plan and zoning bylaw, they should be consulted by the selectboard before making a decision on discontinuing a town road. The town plan's transportation section should also be consulted before other major decisions are made with regard to expanding or shortening the town's highway system.

For sample Class 4 road policies, highway acceptance policies and general highway ordinances, please contact the VLCT Municipal Assistance Center.

E. RIGHTS-OF-WAY

"The right-of-way for each highway and trail shall be three rods wide unless otherwise properly recorded." 19 V.S.A. § 702. (One rod equals five and a half yards, or 16' 6".) At times, there is no survey data to define the exact location of a road, in which case one can "presume that the width of a highway is three rods, and that the width is to be measured from the center line of the currently existing highway." *Town of Ludlow v. Watson*, 153 Vt. 437 (1990). According to 19 V.S.A. § 775, a public trail resulting from downgrading a road retains the width of the road.

Permits are required for any work done in the town's rights-of-way and are issued by the selectboard. 19 V.S.A. §§ 304(a)(21), 1111. Projects must comply with local zoning and highway ordinances and regulations. Applicants must apply in writing for the construction, installation or alteration of driveways, fences, buildings, ditches, culverts, sewers, pipes and wires. When issuing permits, the selectboard takes into consideration highway protection and safety standards, while allowing reasonable access to abutting properties.

One of the most common requests for a right-of-way permit is for a "curb cut," or driveway access to a town highway. Many towns have specifications for driveway access written into their highway ordinance or included in a separate curb cut policy adopted by the selectboard. This policy or ordinance generally addresses issues of drainage (appropriate installation of culverts, slope, etc.) and safety (adequate sight lines, angle of entry, location vis-à-vis intersections, etc.). Towns that undergo continuing development should be aware of the authority granted to selectboards by 19 V.S.A. § 1111(f) to eliminate access previously permitted and require the construction of a common frontage road as a condition for a new permit.

Placement and relocation of utility wires also prompts many requests for right-of-way permits, and is specifically addressed in 30 V.S.A. §§ 2502-2504.

F. REPAIRS, MAINTENANCE AND IMPROVEMENTS

The selectboard has "the duty and responsibility" to properly maintain the town highways. 19 V.S.A. § 304. Maintenance and repair are addressed in 19 V.S.A., Chapter 9, which discusses brush removal, curb cuts, crosswalks, change of grade, snowfences, etc.

Most of the town's road repair and maintenance will be done within the town's right-of-way. While Vermont statutes grant the town the authority to perform work within, and in some cases even beyond, its highway right-of-way, this authority does not completely negate the abutting landowner's rights to his or her property. Thus, when the selectboard's maintenance and repair decisions on behalf of the town conflict with the individual rights of property owners, the board must follow the quasi-judicial process described in 19 V.S.A. § 923, allowing for notice, a right to be heard, and the payment of damages where appropriate. Such a situation would occur, for example, when the town decides to put snow fences up on private property, divert streams or lay out temporary logging roads – all activities that must follow a proper hearing. Also, keep in mind that before altering any streams or other watercourses, a town must receive the appropriate permits from state environmental agencies.

Maintenance for general safety purposes and road crossing accommodations for persons with handicaps are addressed in 19 V.S.A. §§ 901-906. Municipalities must also "erect or cause to be erected" warning signs in school districts. 19 V.S.A. § 921. Finally, two or more towns that share a road are granted the authority in 19 V.S.A. § 910 to jointly undertake a maintenance project on the road.

Towns are liable for injuries and damages that occur as a result of bridge or culvert defects, including problems with guardrails and abutments. Liability extends to any defective bridge or culvert where the town officers knew or should have known of the existence of the defect. However, damages suffered as a result of crossing a bridge or culvert with a vehicle weighing more than the posted weight limit are not the responsibility of the town. Please note, too, that unless written notice of damage or injury is given to a member of the selectboard within 20 days of the incident, the town will not be held liable. 19 V.S.A. § 987.

G. PROTECTION OF HIGHWAYS

Highways are to be kept open and safe for people and cattle and are to be protected from undue damage. 19 V.S.A., Chapter 11. Artificial lights that create a traffic hazard may be removed or altered by the selectboard. 19 V.S.A. § 1104. Any unauthorized obstruction of public highway or trail that hinders traffic or causes injury may result in fines, actual damages and attorney's fees. 19 V.S.A. §§ 1105-1106. Cattle crossings are addressed in 19 V.S.A. § 1107.

Wanton or willful damage to highways or bridges and damage caused by obstruction or diverting water or by dragging logs or other objects are also subject to fines and damage awards. The Agency of Transportation or the selectboard may restrict the use of highways under some circumstances in order to protect them. 19 V.S.A. §§ 1109-1110. In particular, section 1110 allows municipalities to post roads, as necessary, for conditions such as mud and other restrictions on travel. Postings under this section are designed to be temporary, in response to unique conditions, and do not have to be registered with the State Department of Motor Vehicles (DMV) as outlined below for permanent local weight limits.

Vehicle weights allowed by state statute on state highways and local roads are listed in 23 V.S.A. § 1392. Those weights apply unless the local legislative body establishes lower weight limits on its local roads and bridges. 23 V.S.A. § 1396.

In order for local limits (other than those set forth in the statutes) to be enforceable, the board must set the weight limit, post both ends of the highway or bridge with signs "of a permanent nature" and file a complete copy of local weight limits with the Vermont DMV no later than February 10 of each year. 23 V.S.A. §§ 1393, 1396 and 1400b. The listing with the DMV must include a complete list of local weight limits, the time of year they are in effect (such as mud season), and the person responsible for local permits. 23 V.S.A. § 1400b(a). The selectboard may vary the weight limits on roads and bridges throughout the year but limits become effective only if the town notifies the DMV within three working days of such posting. 23 V.S.A. § 1400b (a) and (b).

Each municipality is responsible for issuing permits to allow vehicles to operate in excess of the legal road limit on its Class 2, 3 and 4 highways. (Permits issued by the state are valid for travel on Class 1 highways.) The law requires that towns wishing to issue permits use a uniform permit form developed by the commissioner of motor vehicles. 23 V.S.A. § 1400a(b). Sample forms are available from the DMV (802) 828-2064. Towns may charge a $5.00 administrative fee for each annual permit. As an alternative, upon payment of a $10.00 fee, an applicant may obtain a permit to operate all of his or her registered vehicles in that municipality. When such a fleet permit is obtained, individual permits need not be carried in each vehicle. 23 V.S.A. § 1400a(c).

Municipalities may retain fines for violation of local weight limits (minus a $6.00 administrative fee) if "the fines are the result of enforcement action on a town highway by an enforcement officer employed by or under contract with the municipality." 23 V.S.A. § 1391a(d).

H. STATE AID

A wide variety of grant programs is available for towns to assist them in maintaining their highways, bridges and culverts. First and foremost is the state aid for town highways grant program. 19 V.S.A. § 306(a). The state distributes the bulk of its transportation assistance to towns through this program. Towns need not apply for the grants; they receive funds based on the number of miles of roads they maintain. Class 1 town highways receive the most aid per mile, with Class 2 receiving less and Class 3 receiving the least per mile. Towns having Class 1 town highways of greater than two lanes receive a larger per mile figure. State aid funds for highways depend on keeping an up-to-date record of miles and classes of town highways, on maintaining highways to an acceptable standard, and on the town annually appropriating at least $300.00 per mile for its class 1, 2 and 3 highways. 19 V.S.A. §§ 305, 307, 308. The amount of state aid is calculated according to the formula in 19 V.S.A. § 306(a)(1-5). Interestingly, selectboard members can be held personally liable to the state for unauthorized expenditures of state highway funds. 19 V.S.A. § 306 (a)(5).

Separate funds for bridges over six feet in length are available and are distributed after towns go through an application process and get on a bridge project list. 19 V.S.A. § 306 (c). This is a multi-year process where the Agency of Transportation (VTrans) annually reviews the list of hundreds of town bridges needing repair or replacement, and subjects them to the same process it uses to replace or repair state bridges. The state does all the work, including planning, engineering, right-of-way acquisition and the actual construction.

Other programs for state aid for town highways are available. Nineteen V.S.A. § 306(e) provides a program for towns to apply for and receive assistance in repairing bridges, culverts, and other structures intended to preserve the integrity of the traveled portion of class 1, 2, and 3 town highways. There is also a grant program for reconstruction and resurfacing projects on Class 2 town highways. This program is similar to the "bridge and culvert" program in that the funds are available on a competitive basis, and the town is responsible for getting the project done. 19 V.S.A. § 306(h). Finally, there is an emergency aid program for repairing class 1, 2, and 3 highways and bridges damaged by natural or man-made disasters. 19 V.S.A. § 306(d).

Since 1993 the state has been responsible for all scheduled surface maintenance for Class 1 town highways. 19 V.S.A. § 306a. There is no local match required for projects funded under this program. Class 1 town highways have now become part of the state highway system for purposes of resurfacing scheduling. The town retains jurisdiction over Class 1 town highways, including, but not limited to, spot patching, traffic control devices, curbs, sidewalks, drainage and snow removal. Major reconstruction of Class 1 town highways continues to be the responsibility of the town, but is eligible for federal and state matching funds as part of the state transportation capital plan. These projects would be handled by the state.

VTrans is responsible for marking all paved Class 1 and 2 town highways with "painted center lines." Towns must notify the Agency when repaving has obliterated these markings. Towns remain responsible for other pavement markings. 19 V.S.A. § 311.

Other types of town highway work, including repairs, construction and pavement markings, may be done by the state on a contractual basis or as a shared project under 19 V.S.A. § 309.

VTrans also offers financial assistance in the form of low-interest loans for municipal purchases of highway construction and snow removal equipment. For more information on its Heavy Equipment Loan Fund, contact VTrans Financial Services, 133 State Street, Montpelier, VT 05633-5001, (802) 828-2631.

There is also interest in the development of bicycle routes that may be "lanes" (part of the paved highway) or "paths" (separated from the highway). 19 V.S.A. § 2301. It is state policy to facilitate the development of an integrated bicycle route system. VTrans may acquire property for that purpose and shall assist other groups in the development and construction of local and regional projects. 19 V.S.A. Chapter 23. Municipal legislative bodies have many of the same powers as VTrans for the purpose of developing bike routes along town highways. 19 V.S.A. § 2307. Helpful resources are VTrans for financial and technical assistance, (802) 828-2093, and the State Department of Forests, Parks and Recreation, (802) 241-3655, for recreational path planning and funding.

I. SCENIC ROADS

A town highway may be designated or discontinued as a "town scenic highway" by the legislative body after a public hearing. If a road becomes a "scenic highway," the town may then have to meet certain standards set by the transportation board. 19 V.S.A. § 2502. A town will receive normal state highway funding and may qualify for special funds "for the purpose of enhancing or establishing designated scenic roads." 19 V.S.A. § 2504. Adjacent landowners may develop their properties "so long as the development is in accordance with existing law or ordinance." 19 V.S.A. § 2505.

J. TRAFFIC ORDINANCES: SPEED LIMITS, STOP SIGNS, PARKING

The selectboard has the authority to set speed limits on town highways. 19 V.S.A. § 304(a)(7). Based on a rudimentary engineering and traffic study, the limit may be set between 25 and 50 miles per hour and may be in effect at all times or only during certain times, so long as appropriate signs are posted. 23 V.S.A. § 1007(a). Cities may also regulate speeds on some state highways. 23 V.S.A. § 1007 (b). Many towns incorporate their speed limits into a general traffic ordinance, which addresses parking, crosswalks, one-way streets and other regulations involving the use of town highways. Towns enact traffic ordinances under the authority granted to the legislative body to regulate the operation, use and parking of motor vehicles on town highways and streets. 23 V.S.A. § 1008; 19 V.S.A. § 304(a)(6). However, adequate notice must be provided and traffic signs must meet the standards of the U.S. Department of Transportation, Federal Highway Administration's Manual on Uniform Traffic Control Devices. Unauthorized signs, signals and markers are prohibited under 23 V.S.A. § 1027, and a municipality may not regulate parking on state highways within its borders without the authorization of the traffic committee. 23 V.S.A. § 1025.

K. STREET NAMING AND NUMBERING

Selectboards are granted the authority to name and address streets by 19 V.S.A. § 304(17) and 24 V.S.A. § 4421. Boards usually find that the process of formally naming or renaming streets can provoke a great amount of public sentiment. Because of the adoption of the enhanced 911, selectboards should refer to the State of Vermont Enhanced 911 Board's Addressing Handbook. Copies of the Addressing Handbook, guidelines, and general information on addressing are available from the State of Vermont Enhanced 911 Board, 94 State Street, Drawer 20, Montpelier, VT 05620, (800) 342-4911. Visit their website at http://www.state.vt.us/e911. For sample address ordinances, contact the VLCT Municipal Assistance Center.

L. REGISTRATION OF MUNICIPAL VEHICLES

Motor vehicles owned by municipalities, volunteer fire fighting organizations or rescue squads and used exclusively for official purposes are charged a reduced fee for registration. All such vehicles must be plainly marked on both sides to indicate their ownership. 23 V.S.A. § 376.

M. COIN DROPS

From time to time, municipalities will receive requests from charitable organizations to hold "coin drops" on a town road. This fundraising practice, which involves a person standing in the road soliciting contributions from passing motorists, is regulated in 23 V.S.A. § 1056. Only not-for-profit and municipal organizations may conduct coin drops, and permission must be obtained from the selectboard before conducting a coin drop. The selectboard must ensure that the organization has liability insurance that provides adequate coverage for the municipality, and the board has the option of denying permission if it feels the coin drop would create safety hazards or undue traffic congestion.

CHAPTER 11
TOWN MEETINGS

A. INTRODUCTION

Although severely curtailed by legislative actions over the years, a Vermont town meeting is still democracy being practiced in its purest form. It is the key to town government, as voters assemble to discuss issues, debate budgets, air grievances, elect officers, and determine the town and school district business for the coming year.

The manner in which Vermonters vote has always been dictated by the General Assembly. With its awesome constitutional grant of powers, the Legislature is allowed to propose and enact laws, notes Professor Andrew Nuquist in *Vermont State Government and Administration*, "upon almost every subject conceived by the mind of man." The result has been that until 1820 no detail of a town's or even an individual's day-to-day life was too minute to be acted upon or responded to by the General Assembly. Beginning in the 1820s, Vermont towns have been controlled by the terms of general laws, though each town is permitted to consider itself a separate government.

In the past, there had been something of a cracker barrel quality to town meeting day – a day for both serious business and a much-needed social respite toward the end of a long Vermont winter. Everyone in the community knew each other, the issues had been debated at quilting bees, grange meetings, and the village store for months, and, considering the amount of money many towns had, discussion on how to spend it was secondary to the impact of raising it from the property taxpayers.

Today, voters are better educated, the system of government is much more sophisticated, and both budgets and business are so complex that there is little latitude for a casual approach to the annual meeting. Town meeting is, however, one of the few opportunities that many voters have to speak their minds, and it is in this open discussion and subsequent voting that many observers find democracy at work.

Vermont law stipulates that town meeting must be held on the first Tuesday in March. The first elections authorized by the Vermont Constitution of 1777, when Vermont became a republic, were held on the first Tuesday in March 1778. Whether or not that first election date has any bearing on the current date for town meeting, the fact is that "a meeting of the legal voters of each town shall be held annually on the first Tuesday of March for the election of officers and the transaction of other business, and it may be adjourned to another date." 17 V.S.A. § 2640(a).

It is important to note that 34 cities and towns in Vermont have special governance charters that may differ from and supersede the town meeting guidelines in this chapter. Officials from cities and towns with such charters should consult them for town meeting guidelines that may be in addition to or in conflict with the general town meeting statutes.

B. THE WARNING

1. **Posting and Publication of Warning.** The selectboard of a municipality is responsible for drafting and posting the warning for annual and special town meetings. The warning for town meetings must be posted in at least two public places within each voting district and in or

near the town clerk's office at least 30 but not more than 40 days prior to the meeting. The posted notice that accompanies the warning shall include information on voter registration, information on absentee voting where applicable, and other appropriate information. 17 V.S.A. §§ 2521, 2641. The warning must also be published in a newspaper of general circulation unless it has been printed in the Town Report and distributed to the voters at least 10 days prior to the meeting. Publication is not required for meetings that are informational only, at which no voting will take place. 17 V.S.A. § 2641.

It is the school board's responsibility to warn all school district meetings. If the annual town meeting is held in conjunction with the annual town school district meeting, they must be separately warned or the joint warning must be signed by both legislative bodies.

The original warning must be signed by a majority of the selectboard and must be filed with the town clerk and recorded with the date and time received noted upon it before it may be posted. In the event that all positions on the selectboard are vacant, the warning may be signed by the clerk, 17 V.S.A. § 2644, and the Secretary of State must call a meeting. 24 V.S.A. § 963.

The auditor's report must also be ready 10 days before town meeting. 24 V.S.A. § 1682.

2. **Contents of Warning.** The warning must include the date, time, and location of the meeting as well as information about voter registration, absentee voting, and voting problems or violations. The specific items of business to be acted upon, such as election of officers, determination of the budget, and public questions, must be itemized and numbered individually. 17 V.S.A. §§ 2521(a), 2642(a).

   The annual town meeting must begin at the time set by the selectboard unless the town has voted otherwise at a preceding meeting. 17 V.S.A. § 2655. Also, if a town has so voted, it may start its annual meeting "on any of the three days immediately preceding the first Tuesday in March at such time as it elects." By convening the annual meeting on one of those three days, the public hearing required for Australian ballot votes scheduled for the first Tuesday in March could be held simultaneously with the "pre-annual" meeting session. Finally, no matter when it is held, annual meeting may transact any business that does not involve Australian ballot voting or voting required by law to be by ballot and to be held on the first Tuesday of March. 17 V.S.A. § 2640(b).

   There is also some flexibility as to the start of special meetings, as the town may vote to start them at 7:30 p.m. on the day before the day the polls are to be opened for voting by ballot. 17 V.S.A. § 2643. Special meetings also do not have to be held on any particular day of the week.

   The board must be careful not to put language into an article that may be construed to sway the voter. For example, adding "If this article is approved it will mean an increase of three cents on the tax rate" or "This article is on as a special request of the recreation department" could reasonably be interpreted to influence a voter's thought process and likelihood of voting in a certain way. Even a parenthetical "On the warning by petition" should not appear, as it may be interpreted to mean that the selectboard really does not approve of it and is throwing in a disclaimer of responsibility for it.

   a. **Petitioned Articles.** State statutes grant voters the authority to petition for certain articles to appear on the warning. Therefore, the warning must include these articles if the

petitioners have followed statutory requirements for filing them (petition has been signed by at least 5% of the legally qualified voters and filed with the town clerk at least 40 days prior to town meeting day). 17 V.S.A. § 2642(a).

As for a non-binding article, such as one calling for an abolition of nuclear power, it is up to the selectboard to decide whether or not to place such an article on the warning. This is an area of conflicting opinion: some court cases have said that selectboards must warn all petitions correctly presented which "constitute business proper and appropriate for transaction at the meeting." Others, however, have been more restrictive and have said the selectboard can refuse items which are "frivolous, useless or unlawful," or which are not "within the province of the town meeting to grant or refuse through its vote." *Royalton Taxpayers Protective Association v. Wassermansdorf*, 128 Vt. 153, 260 A.2d 203 (1969); *Whiteman v. Brown*, 128 Vt. 384, 264 A.2d 793 (1970). In summary, selectboards are not required to place an advisory article on the annual meeting warning, but may do so if they decide, in good faith, that such a referendum is worthy of consideration.

Keep in mind that an article in the warning regarding "other business which may properly come before the voters" cannot be used for taking binding municipal action, as such other business was not fully warned. 17 V.S.A. § 2660.

On occasion, a petition will be made to include a town meeting article that conflicts with state law. At this point it must be remembered that all law in Vermont is derived from the General Assembly. No matter how well intentioned the local petitioners may be, if the General Assembly has not given the town the right to vote on a particular issue, it should not be put in the warning.

Naturally, if a petition is denied, an explanation should be given to the makers of the petition. It should also be explained that if the voters wish to do something contrary to state law or beyond the powers granted to a town, that the proper forum would be for the town to consider adopting a charter (see Chapter 7). Through a charter a town can empower its voters to do almost anything, so long as it does not violate the state constitution or the federal constitution or any of its laws.

C. AUSTRALIAN BALLOT

An Australian ballot means a uniformly printed ballot, typically confined to the secret vote on previously warned articles. The Australian ballot system involves having the polls open for an extended period of time for the purpose of voting on previously warned matters. The time the polls are open may be during or after a municipal meeting or both. 17 V.S.A. § 2103(4).

Some matters must be voted by Australian ballot. For example, whether to appoint rather than elect constables, 17 V.S.A. § 2651a, and approval of bond votes, 24 V.S.A. § 1758, are matters that must be decided by Australian ballot. In other matters, municipalities may vote to use the Australian ballot for election of officers, adoption of a budget, all public questions or only specific public questions. When a town has made the decision to vote particular matters by Australian ballot, that system goes into effect at the next meeting after the vote was held and stays in effect until the town votes otherwise. The town clerk is the presiding officer for all Australian ballot elections or as otherwise provided by 17 V.S.A. § 2452. 17 V.S.A. § 2680.

As in general elections, there can be no campaigning or electioneering within a certain distance of the polling place. Therefore, when warned articles are being voted by Australian ballot during a meeting, there can be no discussion of the matter while the polls are open and voters are going in and out. In order to remedy this lack of discussion time, 17 V.S.A. § 2680(g) provides that "the legislative body shall hold a public informational hearing on the question by posting warnings at least 10 days in advance of the hearing … [and] the hearing shall be held within the 10 days preceding the meeting at which the Australian ballot system is to be used." This informational meeting may be held in conjunction with a town meeting that convenes prior to the first Tuesday in March, as allowed by 17 V.S.A. § 2640. If the two occur concurrently, the town moderator shall preside.

When officers are to be elected by Australian ballot, they must be nominated by petition. Petitions must state clearly what office the person is running for and the length of the term, must be signed by 30 voters or one percent of the legal voters in town (whichever number is less) and must be filed with the town clerk within the time prescribed by 17 V.S.A. § 2681. Ballots for local elections must meet the standards set in 17 V.S.A. § 2681a and the municipality is responsible for the expense of preparing them.

When officers are voted by Australian ballot, the person receiving the highest number of votes shall be declared elected. A write-in candidate must receive 30 votes or one percent of the registered voters (whichever is less) in order to win. If no one is running by petition and no write-in candidate receives the required number of votes, the selectboard may appoint a voter to fill the office. If there is a tie vote, a run-off election shall be held between the tied candidates. 17 V.S.A. § 2682.

A process for recounts of votes for local officials and for an appeal of the result of the recount are provided in 17 V.S.A. §§ 2683-2687. In addition, any voter may demand a recount on any question voted by Australian ballot, if the margin of vote was less than five percent of the total votes cast.

D. Explanation and Examples of Articles

As mentioned above, the warning must list, by separate article, all the business to be transacted during the meeting, including election of officers, budget issues, and other questions to be voted upon. 17 V.S.A. § 2642(a). A selection of "example articles" as they might be worded in a typical warning follows.

1. **Headings.** The exact style of headings for your warning will depend upon the manner in which your meeting is conducted, whether or not you use the Australian ballot system, if your meeting begins before the first Tuesday and is recessed for Australian ballot voting on Tuesday, and whether you have more than one polling place. Examples of headings include:

    a. The legal voters of the Town of Ferdinand are hereby warned and notified to meet in the town hall in said Town on Tuesday, March 2, 1999, at 10:00 a.m. to transact the following business:

    b. The legal voters of the Town of Ferdinand are hereby notified and warned to meet at the elementary school in said Town on Saturday February 27, 1999, at 7:00 p.m. to transact the following business (voting for town officers to be by Australian ballot on Tuesday March 2, 1999 with polls open from 10:00 a.m. until 7:00 p.m.):

c. The legal voters of the Town of Ferdinand are hereby warned and notified to meet at the polling places designated for the several districts in said Ferdinand on Tuesday, the 2nd day of March, 1999, at 9:00 a.m. to act on the following articles:

2. **Election of Moderator** (17 V.S.A. § 2646). As the moderator is responsible for the conduct of the town meeting, the first article should provide for his or her election.

   a. To elect a moderator for the ensuing year.

   b. To elect all town officers as required by law.

   The specific Article "a" above would be used when the general election of officers provided by Article "b" is not placed at the beginning of the warning.

3. **Town Clerk and Treasurer (17 V.S.A. § 2646).** A town clerk and a town treasurer are chosen from among the legally qualified voters of the town for a term of one year unless a town votes for a term of three years. The town clerk and treasurer are two different offices and must be decided separately.

   a. To choose a town treasurer for the ensuing year.

   b. To see if the town will vote to elect a town clerk for the term of three years as provided in 17 V.S.A. § 2646(2).

   c. To see if the town will vote to elect a town treasurer for the term of three years as provided in 17 V.S.A. § 2646(3).

4. **Road Commissioner (17 V.S.A. §§ 2646(16), 2651).** The town may vote to elect one or two road commissioners rather than to have them appointed by the selectboard.

   a. To choose a road commissioner for the ensuing year.

5. **Reports of Officers.** An article as to the disposition of officers' reports is customary, although it is unclear exactly what the voters' role is other than having an opportunity to question the authors of the reports.

   a. To hear the reports of the town officers for the past year, and to take action thereon.

   b. To see if the voters will accept the town report.

6. **Appropriations.** Money is always a sensitive issue. There are 246 municipalities and almost as many different ways of warning the budget. The basic requirement for the article is that it must tell the voters what their "yes" or "no" vote will mean as a tax burden. Under the statute, the budget may be expressed as "the specific amounts, or the rate on a dollar of the grand list." 17 V.S.A. § 2664. Neither method gives the voter an exact figure for his or her tax bill, but each method will provide a comparison to last year's budget, which really provides the information that voters want. The following are different ways appropriations may be warned:

   a. To see if the voters will appropriate an amount not to exceed $1,356,000.00 to pay the expenses and indebtedness of the Town for the 1999-2000 fiscal year [or "for the ensuing year" or "for the current year"].

   b. To see what rate on a dollar of the grand list the town will appropriate to pay its expenses and liabilities for the [ensuing, or current or fiscal] year.

c. To vote a budget to meet the expenses and liabilities of the town.

Special appropriations can be handled in some of the following ways:

d. To see if the town will appropriate the sum of $750.00 for the rescue squad.

e. To see if the town will vote to appropriate a sum of money to defray the expenses of the recreation commission.

7. Taxes. Don't forget to provide for the collection of taxes and related matters.

a. To see if the town will vote to have its taxes collected by the treasurer and to fix the date or dates for the payment of same and the amount of any discounts to be allowed.

b. To see if the town will vote to pay its real estate and personal property taxes to the treasurer in quarterly installments, with due dates being March 1, June 1, September 1, and December 1.

c. To see if the town will vote to exempt the first $15,000 of appraised value of new buildings (constructed within the last 12 months) from taxes for a period of three years as provided in 32 V.S.A. § 3836.

The law permits towns to charge interest of up to one percent per month on all delinquent taxes for the first three months they are delinquent and up to one and one-half percent for each month thereafter (32 V.S.A. §§ 4873 or 5136), in addition to the penalty for the tax collector (32 V.S.A. § 1674). A suggested article is:

d. Will the town levy an interest charge on all delinquent taxes on real and personal property of 1% per month or fraction thereof from the due date of each installment for the first three months, and 1½% per month or fraction thereof for every month thereafter, as provided for in 32 V.S.A. § 4873?

Some towns provide for a vote to authorize borrowing in anticipation of taxes. However, such a vote is unnecessary because 24 V.S.A. § 1786 provides statutory authority for the selectboard to do so.

8. Fiscal Year versus Calendar Year. Municipalities may elect to operate on a fiscal year or on the calendar year. (Note that this is in contrast to school districts that must use the fiscal year ending on June 30.) 24 V.S.A. § 1683. (For more information on this topic, see the *VLCT News*, November 1998 issue.)

a. Shall the town vote to adopt a July 1 through June 30 fiscal year, effective for the fiscal year beginning July 1, 20__ as provided by 24 V.S.A. § 1683?

9. Energy Issues. Under 32 V.S.A. § 3845, municipalities have the option of exempting alternative energy sources from real and personal property taxes. If so voted by the town, the selectboard may appoint a town energy coordinator. 24 V.S.A. § 1131.

a. Shall the town vote to exempt from real and personal property tax alternate energy sources as defined in 32 V.S.A. § 3845?

b. Shall the town authorize the selectboard to appoint an energy coordinator as provided in 24 V.S.A. § 1131?

10. **Other Business.** An article entitled "other business" may not be used for taking any binding municipal action. It is the responsibility of the moderator to rule on such matters. 17 V.S.A. § 2660(d).

E. DETERMINING THE BUDGET

A chief concern at town meetings is to consider and vote upon the town budget. Vermont election law states that "A town shall vote such sums of money as it deems necessary for the interest of its inhabitants and for the prosecution and defense of the common rights. It shall express in its vote the specific amounts, or the rate on a dollar of the grand list, to be appropriated for laying out and repairing highways and for other necessary town expenses." 17 V.S.A. § 2664.

An adequate town budget, noted the late Andrew Nuquist in *Vermont State Government and Administration*, should include a statement by the selectboard which: (1) reports the total financial condition of the town; (2) gives a detailed comparison of one or more previous years; (3) includes the expenditures of the year just passed; and (4) presents the proposed budget for the coming year. This should be followed by the dollar amount required (or suggested by the board). Usually someone will ask, "If we approve this, what will that mean on the tax rate?" There is no way to predict this down to the last penny because the grand list for the current year has not been finalized. The best answer is, "Based on last year's grand list [or perhaps, on the best guess of the listers for this year], this will mean a 3 cent [or 8 cent or whatever] increase over last year's tax rate. On a $100,000 property, that will mean an increase of $XX.xx."

F. WHAT CAN BE DONE TO A BUDGET AT TOWN MEETING?

Many myths abound about what action can be taken on a budget: "It can't be amended;" or "it can only be amended down." The Secretary of State and VLCT agree that town budgets and budget line items properly warned for an open town meeting may be amended up or down. New line items cannot be added, but existing line items can be deleted. School budgets, however, can only be amended in the total; line items are determined by the school board. 16 V.S.A. § 563. Budgets considered by Australian ballot can only be approved or disapproved; no amendments are possible. Examples of acceptable amendments to town budgets are:

- "I move we amend the line item *fire trucks and equipment* from $15,250 to $17,500."
- "I move we strike the line item *playground activities*."
- "I move the total budget figures be reduced from $512,876 to $500,000 and direct the selectpersons to determine the line items to be reduced to meet the lower figure."

Examples of unacceptable budget amendments are:

- "I move we add a line item for $500 for the humane society."
- "I move we take the money budgeted for *equipment repair* and buy a new pick-up truck with a plow."

The moderator has the final decision on whether a proposed amendment is germane and allowable. Some amendments are obviously not allowable; others are a judgment call. For

example, how much can the budget be amended up or down? Can someone move to double it or to reduce it to $1.00? Probably not. What about $10.00?; $1,000.00?

When any article has been voted on and the body has begun to discuss another article, there can be no further discussion or revote of that article at that meeting. (See Section H., below.)

G. SPECIAL MEETINGS

Whether it's to vote on a bond issue, elect someone to fill a recent vacancy, or to purchase a new fire truck, a town may wish to call special meetings outside of the annual town meeting. As a rule of thumb, the same regulations that apply to town meeting also apply to special meetings, but there are certain exceptions.

A special meeting may be called either by the legislative body or by five percent of the municipality's registered voters. If the legislative body receives a valid petition for a meeting from the voters, then it must set a date (or "call") for the meeting within 15 days. That date set for the meeting must be not fewer than 30 or more than 40 days from the date the meeting was warned or called. Special meetings may be held on any day of the week and, if the town so votes, may begin at 7:30 p.m. on the day before the polls will be open for ballot voting. If voting will be by Australian ballot, then the rules governing Australian balloting must be followed. (See Section C, above.) 17 V.S.A. § 2643.

The legislative body may cancel a special meeting called by it but may not cancel a special meeting called by five percent of the voters. 17 V.S.A. § 2643(c).

H. RECONSIDERATION OR RESCISSION OF VOTE

A warned article voted on at town meeting (or a special meeting) may not be submitted to the voters for reconsideration or rescission at the same meeting after the body has begun consideration of another article. It may only be submitted to the voters at a subsequent annual or special meeting warned for that purpose. Such special meeting may be called by the selectboard on its own motion or by a petition signed by at least five percent of the qualified voters and filed with the town clerk within 30 days of the date of the meeting. 17 V.S.A. § 2661.

"Reconsideration" and "rescission" are two very different actions. *Robert's Rules* gives the purpose for reconsideration as a vote "to permit correction of a hasty, ill-advised or erroneous action, or to take into account added information or a changed situation that has developed since the taking of the vote." To rescind is to cancel or countermand a previously adopted article, which strikes out the entire motion. For example, if one wishes to defeat a bond vote already approved by the voters, one would call a special meeting to rescind. But, if one wanted to take another stab at a bond vote that had been defeated, or wished to add or take away money from a town budget that had been passed, the call would be for reconsideration. *Robert's Rules of Order, Newly revised*, Scott, Foresman, 1990 ed., pp. 299, 309.

A question voted on may not be presented for reconsideration or rescission at more than one subsequent meeting except with the approval of the selectboard. 17 V.S.A. § 2661(c). However, the same article may be placed on the ballot for the next annual town meeting by the proper petition of five percent of the voters.

I. IMPROPER INFLUENCE

"Neither the warning, the notice, the official voter information cards, nor the ballot itself shall include any opinion or comment by any town body, officer, or other person on any matter to be voted upon." 17 V.S.A. § 2666. The Vermont Supreme Court has held that there was no improper influence where the school board sent an informational letter to voters which had no opinion or comment. *Conn v. Middlebury Union High School District*, 162 Vt. 498 (1994).

J. ERRORS AND VALIDATION

Errors on a warning or a notice may occur even when care is used in preparation. If the meeting and the business transacted during it is otherwise legal and within the scope of municipal powers, the omission or non-compliance may be corrected and legalized by vote at a regular or special meeting of the municipality called and duly warned for that purpose. 17 V.S.A. § 2662.

Errors or omissions in the conduct of an original meeting which are not the result of an unlawful notice or warning or non-compliance may be taken care of by a two-thirds vote of the selectboard at a regular or special meeting called for that purpose. It should be stated that the defect was the result of oversight, inadvertence or mistake. It is of the utmost importance when validating a meeting or action to use the language in 17 V.S.A. § 2662:

> "Shall the action taken at the meeting of this town [city, village, or district] held on [date] in spite of the fact that [state the error or omission], and any act or action of the municipal officers or agents pursuant thereto be re-adopted, ratified and confirmed."

K. ELECTIONS – NO CANDIDATE

If no person files a petition for an office to be filled at town meeting, and if no person is elected by write-in votes, the selectboard may appoint a voter of the municipality to fill the office until town meeting next year. 17 V.S.A. §§ 2647, 2682(d). Even though the vacancy might be for an office that runs for more than one year, the appointment may only be until the next annual meeting.

In the case of a tie vote for any office, the selectboard (or the clerk on its behalf) shall, within seven days of the annual meeting, warn a run-off election to be held not less than 15 nor more than 22 days after the warning has been published. The only candidates whose names shall appear on the ballot for the run-off are those who were tied in the original election. 17 V.S.A. § 2682(e).

L. THE TOWN REPORT

The town report is the responsibility of the town auditors or the selectboard, if the town has voted to eliminate the office of auditor, as allowed under 17 V.S.A. § 2651b. The report must show:

- a detailed statement of the financial condition of the town and school district;
- a classified summary of receipts and expenditures;
- a list of all outstanding orders and payables more than 30 days past due;

- the deficit, if any;
- any such other information as the municipality may direct; and
- the report and budget of the supervisory union required by 16 V.S.A. § 261A(10).

24 V.S.A. § 1683.

This gives the selectboard the authority to include a selectboard report, stating the condition of the town and events of the past year, as well as the vital statistics of the town and other such information.

CHAPTER 12
PUBLIC WORKS

A. AIRPORTS

1. **Construction, Operation.** Municipalities may individually or jointly construct and operate an airport, landing field or air navigation facility or may lease or sublet the same. 5 V.S.A. § 601. The selectboard by resolution can establish the airport. 5 V.S.A. § 602. If more than one municipality is involved, an intermunicipal committee must be created, composed of the selectpersons from each town. The real estate will be owned jointly. The resolution approved by the joint committee may specify the matters subject to joint approval of the bodies, and prescribe the proportion of the cost of the project to be borne by each municipality. 5 V.S.A. § 603. A joint airport must be located within the county in which at least one of the municipalities is located. 5 V.S.A. § 604. A Vermont municipality may establish a joint airport with municipalities from adjacent states. 5 V.S.A. § 605.

   The selectboard may direct an appropriate officer, board or body to acquire or lease real property for an airport or it may set apart and use municipal property that, in its judgment, is not needed for any other public use. However, the selectboard must approve the site. 5 V.S.A. § 605. An airport shall not be established, constructed or improved without a vote of the town fixing the maximum amount of money that may be spent on such a project. 5 V.S.A. § 606. All income derived from the operation of the airport and the proceeds from bonding may be used for the maintenance and upkeep of the airport. 5 V.S.A. § 606. The voters must approve such an expenditure limit even if some or all the money comes from private sources or state or federal grants. Atty. Gen. Opinion, 1962-64, 171, 327.

   Towns owning or operating airports may accept grants, loans and assistance from the federal government, subject to State Agency of Transportation approval. They may contract with the federal government for any airport facilities. 5 V.S.A. § 608. The State may also provide funds to towns for various airport purposes. 5 V.S.A. §§ 691-774.

   Towns have eminent domain authority for airport purposes, with the process established in 5 V.S.A. §§ 651-655 and 19 V.S.A. Chapter 5.

   Of the 17 airports in Vermont that are open for public use, only Burlington and Fair Haven are municipally owned. There are ten state and five privately owned airports. Municipalities interested in establishing a municipal airport should contact the State Agency of Transportation's Rail and Aviation Division.

2. **Zoning**. In accordance with 5 V.S.A. Chapter 17, a municipality may adopt special bylaws governing the use of land, location, and size of buildings and density of population within two miles from the boundaries of an airport under an approach zone and for a distance of one mile from the boundaries of the airport elsewhere. The designation of that area and the bylaws applying within that area must be in accord with the applicable airport zoning guidelines, if any, adopted by the Vermont transportation board. 24 V.S.A. § 4414(1(C).

   Under 5 V.S.A. Chapter 17, a political subdivision or a joint airport zoning board appoints a commission that recommends airport zones and regulations to be adopted. The legislative body of a single municipality or the joint board where more than one municipality is

involved may adopt, administer and enforce regulations. Such regulations must be filed with the clerk of each affected city or town and notice must be given as described in 5 V.S.A. § 1008. Provision is made for existing non-conforming use, variances and conditional uses. Appeals shall be made to a board of adjustment provided for under the regulations; appeals from that body go to the superior court. Penalties for violations of airport regulations may be fines up to $500 or 90 days in jail or both.

B. UTILITY PLANTS

State statutes authorize municipalities to buy and sell electric current and to construct, purchase or lease, and maintain and operate gas and electric manufacture and distribution plants. 30 V.S.A. Chapter 79. Fourteen cities, towns and villages currently do provide electricity, though none is in the gas business. Chapter 79 sets forth the process for the creation, purchase, bonding, operation, eminent domain authority, and administration of such services.

Municipal officials interested in creating or operating an electric plant can call the Vermont Public Service Department at (802) 828-2811 or the Vermont Public Power Supply Authority at (802) 244-7678.

C. WATER TREATMENT SYSTEMS

There are several ways in which municipalities may be involved in providing water and water treatment. Any municipal corporation is empowered to acquire property, water rights and real estate for the purpose of providing water for fire protection or other purposes. 24 V.S.A. § 3301. The municipality may be a village, town, city, fire district or a separately formed municipal corporation. Under 24 V.S.A. Chapter 89, such corporation has broad powers and is under the management of water commissioners, subject to the will of the legal voters of the municipality. Ordinances may be adopted related to the water system and its operation, including the authority to require existing customers to remain connected to the municipal system. 24 V.S.A. § 3315.

The corporation has the authority to take land, so long as it gives adequate compensation. The compensation may be agreed upon between the parties or by a commission appointed by the superior court. 24 V.S.A. §§ 3303, 3304. The corporation has the power to tax properties, issue bonds and borrow money for capital and operating expenses. 24 V.S.A. §§ 3309, 3310. Charges for water usage may be made on the basis of metering or an annual rent and all money collected must be used for operation of the water system. 24 V.S.A. §§ 3311, 3313. Charges, rates and rents that are not paid become a lien against the property. 24 V.S.A. § 3306. Municipalities also have a collection tool in the water and sewer disconnect statutes found in 24 V.S.A. Chapter 129.

Contracts may be made to supply water to other municipalities, corporations, or individuals. In addition, the corporation may enter into contracts and lease purchase agreements for construction, operation and maintenance of the system, so long as the contract period is no more than 40 years or for the useful life of the system, whichever is less. 24 V.S.A. § 3305.

There is sometimes confusion about the difference between a fire department and a fire district. A fire department is an entity whose purpose is to provide fire protection, whereas a fire district is a municipal entity established under 20 V.S.A. Chapter 171. It may consist of a town, part of a town, or two or more towns organized for the purpose of providing fire protection, water and sewer services or other services. 20 V.S.A. § 2601. It has voters, a prudential committee, clerk,

treasurer, collector of taxes and a board of tax abatement. It may adopt a town manager form of government.

Under 24 V.S.A. Chapter 91, two or more municipal corporations may form a consolidated water district. After being approved by Australian ballot vote by the voters of each municipality and certified by the Secretary of State, such a consolidated district becomes a separate entity and must then hold an organizational meeting. 24 V.S.A. § 3343. Thereafter it holds annual meetings much as towns do.

The commissioners set water rates and may enter into contracts to supply service to non-members. Rates must be adequate to provide payment for current expenses, interest on debts, and improvements. Extra money may be put into a sinking fund. 24 V.S.A. § 3348(a)(3). The annual budget, apportionment, assessments and taxes are set as described in 24 V.S.A. § 3349. Debts may be incurred under 24 V.S.A. Chapter 53 (general indebtedness of towns) or 24 V.S.A. Chapter 89 (indebtedness for water works). A process is provided for new member towns to join the district or for current member towns to withdraw. 24 V.S.A. §§ 3354, 3355. The legislative body may impose special assessments to fund improvements, construction, etc. Special assessments are taxes imposed only on the properties to benefit from the improvement, as opposed to all properties on the entire grand list. 24 V.S.A. Chapter 87.

Chapter 95 of Title 24 V.S.A. addresses both water mains and sewers where there is a municipality within a municipality (e.g. a village in a town or a fire district within another municipality). The chapter is a little confusing, but it appears that persons who live in a town in which there is a village water or sewer system may petition the village system for an extension outside of the village if such an extension will be to their benefit. The selectboard and the trustees may then agree as to the change and apportionment of expenses, after which the construction may take place, subject to an appeal process. 24 V.S.A. §§ 3401-3407.

The statutes 24 V.S.A. §§ 3410-3412 address the situation where both water mains and sewage pipes serving the village must, for “the public good and necessity” extend out into the town (or already extend into the town and need to be altered). In that case, the trustees and selectboard members may agree to proper compensation or the parties may petition the superior court to determine damages and compensation.

All public water systems are subject to federal standards and to state regulation by the Agency of Natural Resources (ANR). The subject of public water supply generally, including important definitions, is in 10 V.S.A. chapter 56. Construction or modification of any water supply system or wastewater treatment system requires a permit from ANR. 10 V.S.A. chapter 61.

There is money available to help finance water supply projects. In 24 V.S.A. Chapter 120, a number of environmental revolving loan funds are established, including the Vermont drinking water planning loan fund and the Vermont drinking water source protection fund. Funding help for advance planning for water supply projects is also covered in 10 V.S.A. §§ 1591 et seq. In addition, there is some financial assistance for construction, improvement or expansion of potable water supply systems, pollution abatement facilities or combined sewer separation facilities provided in 10 V.S.A. §§ 1621 et seq.

D. SEWAGE TREATMENT PLANTS

Several chapters in Title 24 of the Vermont Statutes Annotated govern sewage systems. Chapter 95 addresses sewers and mains, which are owned by one municipality and serve users in another municipality (e.g., a village system that serves residents outside of the village, or a town system that serves a village within its borders). Chapter 97 applies to a "sewage system" defined as "such equipment, pipeline system and facilities as are needed for and appurtenant to the disposal of sewage and waters …, including a sewage treatment plant and separate pipelines for storm, surface and sub-surface waters." 24 V.S.A. § 3501(6). Chapter 101 applies to a "sewage disposal system" which seems to mean "such plant, equipment, system and facilities as are needful for and appurtenant to the disposal of approved sanitary methods of domestic sewage, garbage, or industrial wastes." 24 V.S.A. § 3601(3). Chapter 105 provides for consolidated sewer districts that may be created by two or more contiguous municipal corporations to create a single system for disposal of sewage.

Sewage systems in a single municipality may be governed by the legislative body of the municipality (selectboard, trustees, prudential committee or mayor and aldermen) or by a board appointed by the legislative body. 24 V.S.A. §§ 3506, 3614. An appointed board may consist of three to seven members, each of whom serves a term of four years. Appointed commissioners may be removed for just cause. The legislative body may designate the board of sewage system commissioners as the board of sewage disposal commissioners. The commissioners have authority to set rates, rents and assessments. The water and sewer disconnect procedures outlined in 24 V.S.A. Chapter 129 may be used to collect delinquent assessments. However, it appears that where the sewer system is operated by appointed commissioners, the disconnect order must be issued by the selectboard, city council, trustees, or prudential committee. 24 V.S.A. § 5142(1).

A consolidated sewer district is a separate municipality and is governed by a board of commissioners who are elected. 24 V.S.A. §§ 3672(b), 3674. The structure and election of the board are described in 24 V.S.A. § 3674. Commissioners of consolidated districts may order water and/or sewer disconnect as a method of collecting delinquent assessments. 24 V.S.A. Chapter 129.

E. SOLID WASTE MANAGEMENT

A lightening rod in the early 1990s, the issue of solid waste management became less volatile later in the decade as Vermont municipalities joined regional solid waste districts or elected to individually manage their waste. In so doing, Vermont cities and towns were fulfilling their statutory responsibility to manage and regulate solid waste in conjunction with a statewide solid waste planning effort. 24 V.S.A. § 2202a. Each municipality, through its district, regional commission or on its own must adopt a solid waste plan that is consistent with the State Solid Waste Plan.

Towns may use various methods for handling solid waste, including recycling centers, transfer stations, composting plants, etc. 24 V.S.A. § 2203a. In addition, they have the authority "to regulate or prohibit the storage or dumping of solid waste … [and] may require the separation of specified components of the waste stream" by adopting a solid waste ordinance. 24 V.S.A. § 2291(12). Such an ordinance may be specific (regulates open burning only) or quite broad (regulates dumping, burning, recycling, etc.).

Enforcement of solid waste ordinances was deemed important enough by the Vermont Legislature that in 1991 it enacted a separate statute (24 V.S.A. Chapter 61, subchapter 12) that outlines a special municipal solid waste ordinance enforcement procedure. Briefly, when there is a violation, the selectboard issues a solid waste order that may require the violator to comply with the ordinance, abate hazards created or restore the environment to its pre-violation state. In addition, fines of up to $500.00 per violation or $100.00 per day for an ongoing violation may be imposed. The alleged violator must receive notice and be given the opportunity to be heard. After a final order has been issued, the violator has a right to appeal to the Environmental Court. The municipality may also separately pursue enforcement via the Environmental Court or the superior court. The State also has enforcement authority under state law, which it will exercise for significant violations.

As mentioned above, a municipality may manage its solid waste alone or it may join with other municipalities. If a municipality chooses to work with others, they may together form a solid waste management district by following 24 V.S.A. Chapter 121 (union municipal districts) or by amending their respective municipal charter provisions.

Forming a solid waste district under the union municipal district statutes involves several steps, including creation of a joint survey committee, submittal of the draft agreement to the Attorney General for approval and an extensive public review process. Because of this, a municipality would be well advised to review 24 V.S.A. Chapter 121 before proceeding. Once it is created, the solid waste management district has the power to hire and fix compensation, enter into contracts, promote cooperation and coordinated action among its members, make recommendations for review and action, borrow money and exercise powers which are exercised or are capable of exercise by its member municipalities. It may issue bonds, with the approval of the voters of the member municipalities. 24 V.S.A. § 4866. Solid waste district boards include representation from each member municipality in accordance with the district bylaws.

An alternative to the establishment of a solid waste district is also found in 24 V.S.A. Chapter 121, subchapter 4 – the establishment of an "interlocal contract." In this situation, municipalities may contract with each other "to perform any governmental service, activity or undertaking which each municipality entering into the contract is authorized by law to perform…" Such an arrangement may be finalized after the joint survey committee, the Attorney General and the voters of each participating municipality have approved it. The contract between member municipalities must conform to the requirements of 24 V.S.A. § 4902. Funding for both the interlocal contract and the union districts is discussed in 24 V.S.A. §§ 4931-4933.

Finally, the general subject of waste management, including radioactive and other types of hazardous materials, landfills, and funding and incentives for source separation, is found in 10 V.S.A. chapters 159-162.

F. BICYCLE ROUTES

Selectboards have the authority to establish and maintain bicycle ways, routes and paths, either along highways in their jurisdictions (bicycle lanes) or as separate paths. 19 V.S.A. § 2307. They have the same authority to take private lands for such purposes as they do for highways as set forth in Chapters 5 and 7 of Title 19. Several towns, including Burlington and Stowe, have established significant systems of bicycle paths and routes within their communities.

Note that the State has a policy to help maintain and improve a "Vermont trails system," which includes trails for recreation, transportation and other compatible purposes. Assistance, advice and funding for trails may be available through the Agencies of Natural Resources and Transportation or from the Vermont Trails and Greenways Council, Inc. 10 V.S.A. Chapter 20.

G. PARKING METERS, PARKING LOTS

Municipalities have the authority to regulate parking on town highways, 23 V.S.A. § 1008; 19 V.S.A. § 304(a)(6), and, with a town vote, to purchase and maintain parking meters on streets and in public parking lots. 24 V.S.A. § 1862.

Selectboards may pass regulations on the parking of motor vehicles, including angle parking on town highways. They may also regulate parking on a state highway in a thickly settled area with the permission of the state traffic committee. 23 V.S.A. § 1008. Though the section refers to "making special regulations," it does not specify the process to follow in doing so. Therefore, it is recommended that such parking restrictions be adopted through the ordinance adoption process set forth in 24 V.S.A. Chapter 59. Limited enforcement of parking violations by towns and incorporated villages with a population of one thousand or more is allowed under 23 V.S.A. Chapter 19.

The selectboard may set the rates for parking. The rates need not be uniform throughout the town, "but regard shall be had for the congestion of the different areas" and "the rates shall be so adjusted as to provide for the maintenance of the services only." 24 V.S.A. § 1864.

Towns have the right of eminent domain to condemn land for a public parking lot, subject to certain restrictions. 24 V.S.A. § 1865. Such authority is restricted if taking any land of religious, charitable or educational organization (unless it is already used by the organization for commercial purposes) without the consent of the organization, unless two-thirds of the voters of the towns approve it. 24 V.S.A. § 2805. Also, such taking is prohibited by 18 V.S.A. § 5318 from applying to any burial ground without special authority from the General Assembly.

Revenues generated by parking lots may only be used to:

- purchase lots;
- purchase and maintain meters;
- collect and process the deposits;
- police, light and maintain the meters and lots, "including painting of parking lines";
- control and regulate traffic within the lot; and
- pay principle and interest on any bonds issued to purchase or improve such lots.

  24 V.S.A. § 1865.

Municipalities have the authority to issue "revenue bonds" to pay for parking lot purchase, construction and/or improvement. 24 V.S.A. § 1868. They are revenue bonds because only the revenues generated by the lot may be used to pay the principle and interest. The bonds do not become a general obligation of the town and taxes cannot be used to retire them.

The process to issue such bonds is described in 24 V.S.A. § 1873. Five percent of the voters or the selectboard, by a motion approved by two-thirds of its members, can call a special town meeting or add an article at the annual town meeting. The warning must include the purpose for

the bond, the estimated cost of the project, notice that only parking revenues are available for the payment of such bonds, and the time, date and place of the voting. A majority of those present and voting at the town meeting must approve the article for the bond to be issued. Other details of the bond issuance are set forth in 24 V.S.A. §§ 1868-1874.

By statute, the annual town report must include a "full, complete and accurate report of all meter and parking lot transactions." 24 V.S.A. § 1866. Also, the law prohibits "advertising matter of any kind" from being attached to or displayed upon parking meters or the standards thereof. 24 V.S.A. § 1867.

H. SIDEWALKS

Selectboards have the authority to construct and maintain sidewalks and footpaths within the limits of town highways where they do not conflict with travel on the highway. The State Agency of Transportation must approve sidewalks located on state highways. 19 V.S.A. § 905.

Selectboards also have the authority to:

- set off portions of town highways for sidewalks and regulate their use. 24 V.S.A. § 2291(1).
- require the owners, occupants or persons having charge of abutting property to remove snow and ice from sidewalks. 24 V.S.A. § 2291(2).
- regulate the location, protection, maintenance and removal of trees, plants and shrubs, buildings or other structures as well as signs, posters or displays on or above sidewalks. 24 V.S.A. § 2291(3) and (7).

I. DIGSAFE

In 1987, the Vermont Legislature passed a law establishing an "Underground Utility Damage Prevention System." The law was passed to reduce the damage done to pipes, wires and cables located underground through excavation. Anyone digging a hole deeper than one foot within an underground utility easement or in a public right-of-way in which an underground utility is located must call Dig Safe at (888) 344-7233 at least 48 hours prior to doing so. Dig Safe then notifies all utility companies having wires or pipes in the area to mark the location of the facilities so that the excavators don't break these lines, disrupting service and potentially harming themselves. Excluded from the definition of excavation is routine public highway maintenance. Emergency excavations (e.g. water or sewer line breaks) do not require the 48-hour period before digging. Towns that dig in violation of the law are subject to a fine and liability for actual damages. 30 V.S.A. §§ 7001-7008. For further information, visit the Dig Safe website at http://www.digsafe.com/.

CHAPTER 13
OTHER MUNICIPAL SERVICES

A. MUNICIPAL POLICE DEPARTMENTS

The selectboard – or the town manager if the town has adopted the manager form of government – may establish a police department and appoint a chief and other police officers. 24 V.S.A. § 1931. Once appointed, the direction and control of the entire police force is vested in the chief of police. 24 V.S.A. § 1931. Police officers employed by a municipal police department have the same powers as sheriffs in criminal matters (e.g., enforcement of the laws and serving criminal process) and these powers may be exercised statewide. 24 V.S.A. § 1935.

Municipal police officers must fulfill the minimum training standards set by the Vermont Criminal Justice Training Council before assuming their duties. 20 V.S.A. § 2358. The Criminal Justice Training Council has different levels of training requirements for part-time officers (working fewer than 32 hours per week or 25 weeks per year) and full-time officers. For more information about the requirements, contact the Criminal Justice Training Council, 317 Academy Road, Pittsford, VT 05763, (802) 483-6228.

There are statutes that provide for cooperation and assistance between law enforcement officers in different jurisdictions. Twenty-four V.S.A. § 1937 provides for reciprocal assistance agreements and 24 V.S.A. § 1938 provides for intermunicipal police service agreements.

The removal of police officers has proved to be a very complex and confrontational area. Prior to a 1990 Vermont Supreme Court decision that found the process unconstitutional, an officer facing charges of negligence, dereliction of duty or conduct unbecoming an officer could argue his or her case before the district court. If the district court found the officer guilty, the selectboard could remove him or her. Since the Court struck down this process and the Legislature has not since revised the statute, VLCT attorneys believe that municipal police are now entitled to the same due process rights as all municipal employees facing discharge. Please contact the VLCT Municipal Assistance Center for details.

B. FIRE DEPARTMENTS

There is no more essential local service than that of fire prevention and suppression. Unfortunately, in Vermont, few local services result in more confusion and unclear lines of authority than fire departments. There are close to 250 separate entities providing firefighting services to Vermont communities. Some are municipal departments of the town; others are volunteer departments that are incorporated separately and are independent of the town. There are also departments that are clearly privately owned, such as the IBM Fire Department in Essex Junction and the Vermont Yankee Nuclear Fire Department in Vernon. Other departments are affiliated with colleges, such as the Lyndon State College Fire Department. Several towns are served by more than one department, such as Randolph with the Randolph and Randolph Center departments or Rockingham, which is served by the Bellows Falls, Rockingham and Saxton's River departments. Also, some communities – such as Underhill and Jericho, and Danby and Mt. Tabor – share a department. Finally, some fire districts serve one or more towns. (See Section 3, below.)

1. **Municipal Fire Departments.** Municipalities are given the authority to create, maintain and operate a fire department, to purchase, own, and sell equipment and apparatus and to appoint officers, firefighters and other employees. 24 V.S.A. § 1951. The selectboard may appoint and remove fire department officers including a chief engineer, an assistant chief engineer and as many captains as it sees fit. It may also set their compensation and subject them to any rules or regulations it adopts. 24 V.S.A. § 1953. Firefighters are appointed by the chief and are subject to rules and regulations established by the selectboard. They may be dismissed or suspended by the chief, but may appeal such action to the selectboard by written request within five days of the action. 24 V.S.A. § 1954. All fire department personnel are subject to personnel rules and regulations established by the selectboard. 24 V.S.A. § 1956.

   All municipal fire department expenditures must be paid by the town general fund unless other means are provided for by the selectboard or voters. 24 V.S.A. § 1955. Towns have the right of eminent domain to acquire real property to house the fire department. 24 V.S.A. § 1952.

   The town fire chief has the same powers and duties as the chief engineer of a fire district. 24 V.S.A. § 1953. (Fire districts are discussed in Section 3, below.) The town chief's authority and responsibilities include:

   - being in charge of the firefighting equipment and keeping it in serviceable order;
   - wearing a badge while on duty that states his or her rank;
   - directing repairs of fireplaces, furnaces and stoves. If such directions are not complied with forthwith, "he or she may cause such change or repair to be made and recover the cost from the owner in a civil action;"
   - being in charge of all equipment and personnel at the scene of a fire or hazardous chemical/substance incident, or where there is a threat of fire or explosion, and removing goods and effects out of a threatened building. (The *exception* to this is that in case of a bomb threat, jurisdiction is with the police department rather than the fire department.);
   - pulling down or removing buildings he or she "deems necessary to prevent the spread of hazardous material or fire;"
   - calling the HAZMAT emergency team when needed; and
   - general crowd control. Traffic at a fire or other emergency is directed by the responding department's "ranking member." 20 V.S.A. §§ 2671-2674.

   A person who disobeys a chief's order may be fined up to $250. 20 V.S.A. § 2675.

   We urge caution with the use of the powers granted by these statutes, as there are questions of constitutional rights of citizens and of property owners – always fertile ground for litigation. In an emergency, immediate action may be called for, such as pulling down a building to stop the spread of fire. However, destruction of private property in a non-emergency situation calls for notice to the owner and a hearing to consider the balance between property rights and public safety. Likewise, the constitutional rights of free speech and assembly must be weighed against the need to suppress "tumults and disorders." In a crisis, knowing what *not* to do can be as important as knowing what to do.

2. **Volunteer Fire Departments.** In towns that do not maintain a firefighting force, the statute allows volunteer fire department chiefs the same authority at a fire as the fire district chief engineer or municipal chief (see Section 1, above). 20 V.S.A. § 2921. Statutes allow exemption of volunteer fire department property from property taxes if the town so votes (32 V.S.A. § 3840), provide for workers' compensation claims (21 V.S.A. § 601(12)(k)) and allow members to participate in a group health insurance program (8 V.S.A. § 4081).

   Volunteer departments are not statutorily affiliated with town government. Therefore, their governance and finances are separate from the town and are not subject to direct control by the selectboard. However, most of these departments derive a certain amount of financial aid from the town, sometimes in the form of purchasing a new fire truck or building a station. The town may attach "strings" to the funds appropriated by specifying them in the warning article. Selectboards also have a fiduciary responsibility to assure that town funds are not spent inappropriately. The more specific the article appropriating the funds, the more responsibility the selectboard has. If the article appropriates $5,000 for the "purchase of breathing apparatus," the selectboard could insist on having the bill submitted as proof the apparatus was actually purchased. If the funds are approved as a line item in the budget without direction, there is little the selectboard can or should do other than cut a check.

3. **Fire Districts.** The ability of selectboards or voters to create fire districts was granted by the Legislature in the 1850s to allow areas of towns to be served by a publicly owned and operated fire department. Over the years, they have become the governmental structure of choice for a number of special services, particularly water and sewer services.

   A fire district may be created within a town by the selectboard upon application in writing of 20 or more freeholders or voters who are residents of the proposed district. The selectboard establishes the district and defines its limits. The residents specify in the application the powers the district will have, chosen from those powers listed in 20 V.S.A. §§ 2601 and 2603. An application can also be made to expand or contract the boundaries. To pass, the change must be consented to by a majority of the landowners who will be affected. 20 V.S.A. § 2481(a).

   The establishment of a new fire district or a change in an existing one may be challenged if a petition signed by five percent of the legal voters of the entire town is filed with the town clerk within 30 days of the notice required for the public hearing on the matter. If such a petition is filed, the matter must be voted by the town at a special or annual meeting. The wording of the statute seems to indicate that the voters must vote by a majority to disapprove the proposed district or change in existing limits. This is a negative vote and should be worded properly to reflect that. 20 V.S.A. § 2481(b).

   Once created, the fire district is a body corporate. The last official act of the town selectboard is the calling of its first district meeting and presiding until a moderator is elected. 20 V.S.A. § 2482. The fire district operates like a town within a town, with the selectboard having no more authority, except that it fills vacancies on the prudential committee until an election is held. Other officers shall be elected at the annual or special meetings of the district. In the case of vacancies, replacements may be appointed by the prudential committee. Note that the chief and assistant engineers need not be residents of the district. 20 V.S.A. § 2485.

   A fire district may be formed within two or more different towns by joint action of the selectboard from each town. Once established, that district shall be governed by all of the

provisions that apply to fire districts located within a single town. The selectboards, by joint action, may fill vacancies of the prudential committee until an election is held. 20 V.S.A. § 2489.

Lastly, the voters of the town may vote to form a town fire district whose limits are the same as the town limits. 20 V.S.A. § 2541. In that case, in lieu of a prudential committee, the selectboard acts as a "board of fire commissioners." 20 V.S.A. § 2543. However, the municipal fire department statutes described in Section 1 above were added to the statutes in 1970, and appear to have removed any advantage to the creation of a town fire district under 20 V.S.A. § 2541.

A fire district may vote to adopt a town manager form of government and may levy taxes for:

- fire protection;
- sewers and sewage treatment plants;
- sidewalks;
- public parks;
- water works, reservoirs and dams;
- lighting (e.g. street lights and possibly to operate an electric company); and
- "for other lawful purposes." 20 V.S.A. § 2601.

The voters may regulate "the manufacture and safekeeping of ashes, gunpowder and combustibles, and the preservation of buildings from fire by precautionary measures and by inspection." 20 V.S.A. § 2602. The voters may empower their prudential committee "to cause the streets to be sprinkled or oiled." 20 V.S.A. § 2603. (It would be wise, however, to check current environmental regulations before "oiling" the streets.) The prudential committee may make contracts and purchases of apparatus and real property. 20 V.S.A. §§ 2604, 2605. A fire district has the power of eminent domain as granted in 20 V.S.A. § 2606.

C. CONSTABLES

A town constable may be elected or appointed, and voters, if they choose to do so, have the authority to limit the constable's law enforcement powers. 17 V.S.A. §§ 2646(7), 2651a; 24 V.S.A. § 1936(a). A vote to authorize the board to appoint the constable must be by Australian ballot.

If no limitations have been placed on his or her authority, the town constable is the town's local law enforcement officer, with all powers of search, seizure and arrest within the town. If, however, the town so votes, the constable only has the power to:

- serve civil or criminal process;
- assist the health officer in the discharge of his or her duties;
- destroy dogs when so ordered;
- kill injured deer;
- remove disorderly people from town meeting; and
- collect taxes, if no tax collector is elected.

There is no requirement that an *elected* constable have criminal justice training, however the voters can restrict the law enforcement activities of those constables who are untrained. 24 V.S.A. § 1936a.

1. **Election, appointment and removal.** At present, a town may choose a first constable and, if needed, a second constable, from among its legally qualified voters at annual town meeting. Alternatively, a town may vote to authorize the selectboard to appoint a constable. (An appointed constable does not have to be a resident of the town.) 17 V.S.A. §§ 2646, 2651a. If five percent of the voters of the municipality file a written protest against the article at least 15 days before the vote, such vote to authorize the selectboard to appoint a town constable must be approved by a two-thirds majority to be effective. Once adopted, the selectboard will continue to have the power to appoint a constable until that power is rescinded by the voters at an annual or special meeting. 17 V.S.A. § 2651a.

   A constable who is appointed by the selectboard may be removed for cause after notice is given to the constable and he or she has had the opportunity of a hearing on the matter. 17 V.S.A. § 2651a. The hearing may be held in executive session or may be public, depending upon the wishes of the constable. The selectboard may then meet in a deliberative session and decide whether to dismiss the constable for just cause. 1 V.S.A. § 312(e). An elected constable may not be removed by the selectboard.

   A constable's term of office is for one year unless a town votes to elect or appoint the constable for a two-year term. 17 V.S.A. § 2646. The constable must take an oath, administered by the justice of the peace (24 V.S.A. § 831) and must be bonded prior to embarking on his or her duties. The amount of the bond is set by the selectboard, which may ask for a larger amount if it sees fit.

2. **Incompatible offices.** The constable cannot serve as a selectboard member, school director, auditor or town manager. 17 V.S.A. §§ 2456, 2647. This rule does not apply to towns having 25 or fewer legal voters, except that the constable may not audit his or her own accounts. 17 V.S.A. § 2648.

3. **Independence of office.** An elected constable is an independent official who is not under the direction or control of the selectboard. However, the constable may not spend town money without the prior permission of the selectboard. This means that if a constable needs uniforms and equipment, the selectboard must agree to spend this money on behalf of the town. If a salary for the constable is not separately voted at town meeting, the selectboard may set the salary for the constable, and may limit the number of hours of law enforcement activities the town will pay for in a given year.

   The first and second constables are independent from each other, with neither acting as the supervisor of the other.

4. **Training requirements.** While an appointed constable must have training before exercising law enforcement authority, an elected town constable is not generally required to have any special training to exercise the functions of the position. 20 V.S.A. § 2358(d). Nonetheless, state law also allows towns to limit a constable's law enforcement power by voting to prohibit the constable from exercising law enforcement powers or by requiring him or her to complete a course of training offered by the Criminal Justice Training Council or another institution as a prerequisite to the exercise of law enforcement powers. 24 V.S.A. § 1936a.

For more information about training opportunities for constables, call the Criminal Justice Training Council at (802) 483-6228.

5. **Sources of law enforcement authority.** Unlike the authority of other law enforcement officers, who have historically enjoyed broadly implied law enforcement powers, the authority of town constables has been limited to only those powers and duties *expressly* granted by statute, and only those implied powers necessary to carry out the express duties. Op. Atty. Gen. No. 52-80 (Jan. 8, 1980). Thus, a constable may only act when authorized by a specific statute, and this power may not be extended by implication.

   A constable with law enforcement authority has the power of search, seizure and arrest within the town. 24 V.S.A. § 1931. Unlike other law enforcement officers, however, constables do not have statewide jurisdiction. As mentioned above, their jurisdiction is limited to the boundaries of the town. *State v. Hart*, 149 Vt. 104 (1987).

6. **Other duties and functions of the town constable.** The constable, like the sheriff, may serve civil and criminal processes, including complaints, summonses, subpoenas, writs and restraining orders, in all civil actions and in criminal process for lawbreaking. 12 V.S.A. §§ 691, 693. No constable is allowed to serve writs in cases in which he or she has a personal and/or financial interests in the debt involved. 12 V.S.A. § 694.

   The constable is also authorized to collect delinquent taxes, when ordered to do so by the tax collector, by seizing and selling the delinquent taxpayer's property by legal process. 32 V.S.A. § 5139. The constable will become tax collector if no specific officer by that title is elected at town meeting. 24 V.S.A. § 1529. The constable may be appointed as a court officer for district court. 4 V.S.A. § 446. The constable is authorized to destroy unlicensed animals, following the requirements of 20 V.S.A. §§ 3621-3623, and may kill an injured deer in accordance with 10 V.S.A. § 4749. The constable may assist the health officer in the discharge of his or her duties. 18 V.S.A. § 617. Finally, during town meeting, the constable may be called upon by the moderator to remove a particularly difficult person who is disturbing the meeting. 17 V.S.A. § 2659.

   Twenty V.S.A. § 2221 states that the governor may employ constables and other law enforcement officers in the event of a state and/or national emergency. This only authorizes the employment of additional constables (and law enforcement officers); it does not enlarge the scope of their authority.

   It is no longer possible for a town to appoint special constables. Instead, that need is met in towns without a police force by the appointment of temporary police officers to work under the jurisdiction of the selectboard. 24 V.S.A. §§ 1931(a), 1936. These temporary police officers are required to have completed law enforcement training. 24 V.S.A. § 1936 (b).

   Constables are not automatically authorized to enforce local ordinances in the town. Selectboards that have enacted civil ordinances can designate the officials who are authorized to enforce the civil ordinances by issuing tickets, and can designate those officials who may represent the town in the Judicial Bureau when a ticket is appealed. The designated individual may be the town constable, but the selectboard is not required to appoint the constable to these positions. If a municipality has retained some or all of its criminal ordinances, then a constable with law enforcement authority may enforce the ordinances.

For more information about the office of town constable, contact the VLCT Municipal Assistance Center at (800) 649-7915.

D. EMERGENCY MANAGEMENT

In accordance with the state emergency management plan and program, each town and city is required to establish a local organization for emergency management. The selectboard must appoint an emergency management director who is responsible for the organization, administration and operation of local emergency management activities in the town, subject to the direction and control of the selectboard. 20 V.S.A. § 6(a).

Many communities appoint their fire chief as the local emergency management director. The responsibilities of the director office can include, for example:

- acting as local point of contact for emergency management issues;
- helping to develop an emergency operations center (EOC);
- developing emergency operations center staffing and internal procedures;
- conducting tests and exercises;
- developing a local emergency operations plan;
- establishing and implementing a notification system to alert key officials in cases of emergency;
- coordinating and leading emergency communications planning and securing equipment;
- coordinating the establishment of an emergency shelter with the American Red Cross;
- establishing and maintaining a relationship with local businesses;
- coordinating training programs for local emergency management officials;
- helping to develop mutual aid agreements; and
- acting as a liaison to the Department of Public Safety's Emergency Management Division.

The local emergency management organization must participate in the development of an all-hazards plan with the local emergency planning committee and the public safety district in which the municipality is located. 20 V.S.A. § 6(c). Each local organization must annually notify the local emergency planning committee of its capacity to perform emergency functions in response to an all-hazards incident and must perform the emergency functions indicated on the most recently submitted form in response to an all-hazards incident. 20 V.S.A. § 6(d).

On the state level, the Vermont Department of Public Safety has an Emergency Management Division. The State Commissioner of Public Safety, with the approval of the Governor, appoints the Director of the Emergency Management Division. 20 V.S.A. § 3. The Director of Emergency Management is charged with coordinating all emergency management efforts within the state.

The Emergency Management Division has provided the following outline of suggestions for emergency management response:

Major emergency management activities fall into one or more of four phases: response, recovery, mitigation or preparedness.

Preparedness. Prior to any emergency – natural, manmade, accidental or deliberate – the major activities undertaken by any community include preparedness. Of the four phases of emergency management, the preparedness phase is often the easiest place to start. In some cases, such as a flood or hurricane, a municipality may have an early warning and several hours to act. However, often there is no prior warning of an impending emergency, such as with earthquakes, tornadoes, explosions, terrorist attacks or major fires. Preparedness is being ready to react promptly and effectively in the event of an emergency regardless of the nature of the event.

Response. Efficient disaster response depends on an organized and prepared government. Preplanning and practice are key to successfully dealing with a disaster. Each community in Vermont is strongly encouraged to develop a Rapid Response Plan to be used in the event of a local emergency. It is easy to complete and it can be an invaluable tool to have when the need arises. It outlines emergency points of contact, the location of emergency shelters, Vermont Emergency Management phone contacts, and other resources, including the American Red Cross, as well as response activities and who or what organization has that responsibility. Send a completed copy of this form to Vermont Emergency Management; give additional copies to selectboard members and the Emergency Manager. You can download this form at www.dps.state.vt.us/vem/rapid/htm.

Many emergency responders are trained in the Incident Command System (ICS) and all should be. In a large-scale incident, ICS will become very important. Simply put, ICS is the model tool for command, control and coordination of a response. It provides a means to coordinate the efforts of individual agencies as they work toward the common goal of stabilizing the incident and protecting life, property, and the environment. ICS uses principles that have been proven to improve efficiency and effectiveness in a business setting and applies them to emergency response. In any major incident, many local, state and federal agencies may become involved. ICS provides an important framework from which the various agencies can work together in the most efficient and effective manner. The principles of ICS enable emergency response agencies to utilize common terminology, span of control, organizational flexibility, personnel accountability, comprehensive resource management, unified command and incident action plans. We strongly urge local government officials to become familiar with the concepts of ICS to better understand emergency systems employed by the local responders, the state and supporting federal agencies.

When the jurisdiction is affected by a disaster, local officials must respond immediately to provide lifesaving operations, restore vital services and provide for the human needs of those affected by the emergency. Sometimes, local jurisdictions can manage the situation without further assistance, but often the State is asked to supplement local resources. State response can range from coordinating and providing State aid following local government's request, to requesting federal help. Local government officials will then work with federal and state personnel to determine which recovery programs are appropriate for implementation.

Recovery. It is difficult to pinpoint exactly when the response phase ends and the recovery phase begins. Generally, it begins when the situation starts to stabilize, sometimes following the response phase and but often overlapping it. It is categorized as either short-term or long-term. Short-term recovery is defined as restoration of vital services and facilities to minimum

standards of operation and safety. Examples include sheltering, feeding and life comforting efforts. Long-term recovery may continue for a number of months or years, as the community returns to pre-emergency conditions. Long-term recovery can include debris clearance, contamination control, disaster unemployment assistance, temporary housing and facility restoration. Local government continues to play an important role during the recovery phase because it is the first line of contact for citizens of the community. As a result, open lines of communication are established that enable local concerns and issues to be communicated to state and federal agencies.

The local emergency management director is most often the primary point of contact for these communications. This is the most effective method for addressing local issues, including setting or changing priorities and procuring additional resources so that the community can be returned to pre-disaster conditions. Additionally, mitigation measures begun during this phase reduce the community's vulnerability to similar disasters that may occur in the future. Lessons learned from the disaster will be considered when developing updated and improved protective measures, including the evaluation of the local emergency operating plan.

Mitigation. Mitigation is the ongoing effort to lessen the impact of natural disasters on people and property. Examples include local efforts to comply with codes and standards, fuel tank tie downs, and zoning. The Federal Emergency Management Agency has designated mitigation as the cornerstone of emergency management. Vermont Emergency Management also believes that the best response to natural disaster is to proactively prevent or diminish its impact. Consequently, the State of Vermont is invested in creating mitigation opportunities in all of its emergency management initiatives.

A number of programs directly support mitigation in Vermont: the National Flood Insurance Program (NFIP), the Flood Mitigation Assistance Program (FMAP) for NFIP-insured properties, the Hazard Mitigation Grant Program (HMGP) and the Pre-Disaster Mitigation Program (PDM). Local communities can address mitigation by assessing their risks and repetitive problems, making a plan that creates solutions to these problems, and taking action to implement the plan through corrective steps. Each of these measures is designed to reduce the vulnerability of local citizens and property.

For information and training opportunities for local emergency management directors, visit http://www.dps.state.vt.us/vem/emd, or call Vermont Emergency Management at (800) 347-0488.

E. FLOOD PROTECTION

Anyone who has ever been a selectperson or a road commissioner during a flood and its aftermath can appreciate the power of water and ice. Combine that power with Vermont's steep hills and narrow valleys, and major destruction is the frequent result. Your entire road budget may be consumed by the damage done to just one of your town highways in a few hours.

One major concern in town is the prevention of flood damage to highways. If the answer to a successful real estate transaction is "location, location, location," the answer to successful highway protection is "drainage, drainage, drainage." The selectboard has broad powers to maintain town highways, including the authority to change stream courses, erect embankments and construct drains and ditches. 19 V.S.A. § 304. In addition, specific statutes deal with

relocation of highways (19 V.S.A. § 935), diversion of streams (19 V.S.A. § 940), embankments (19 V.S.A. § 945) and placement of drains (19 V.S.A. § 950), as well as a process for condemnation of property and estimation of damages to the landowner when the town must take private property for highway use. 19 V.S.A. §§ 923, 926.

In addition to positive activities by the town, there is also the ability to prevent others from causing water damage to highways. Nineteen V.S.A. § 1108 provides that "a person who wantonly or willfully injures a highway, or a bridge ... [or] injures a public highway by obstructing or diverting a stream, watercourse or sluice ..." may be fined $100 for each offense and shall be liable for damages and costs. Another useful statute, 19 V.S.A. § 1111, enables towns to control activities in the highway right-of-way. This includes permitting for any driveways, installing wires, pipes and sewers and diversion of water so that it flows into the road. Nineteen V.S.A. § 1111(h) and (j) provide for enforcement of this statute by the state for state highways and by the selectboard for town highways and allow penalties from $100 to $10,000 per offense.

There are environmental constraints on the diversion of streams and removal of material from waterways that have a drainage area of greater than ten square miles. 10 V.S.A. Chapter 41. Note that the definition of "person" for purposes of Chapter 41 includes "municipality," so the selectboard must consider possible jurisdiction of the Department of Environmental Conservation (DEC) of the Agency of Natural Resources (ANR) when planning work that involves significant waterways. The penalty for unauthorized stream alteration is up to $10,000 per offense. A phone call ahead of time to prevent such a penalty would be prudent. DEC's Water Quality Division telephone number is (802) 241-3770.

In addition to highway concerns, a municipality may be able to prevent damage to other properties in two ways. First, it "may purchase, or acquire by gift, title to land ... for the purpose of constructing, maintaining and operating improvements for flood prevention...." 10 V.S.A. § 952(b). This may be done with the help of federal funds.

The second way is to adopt flood hazard bylaws. 24 V.S.A. §§ 4424. At a minimum, these bylaws must provide that no permit may be granted until a copy of the application is delivered by the zoning administrator or the appropriate municipal panel to ANR and either 30 days have elapsed following the mailing or the Agency delivers comments on the application. 24 V.S.A. 4424(2)(C). Flood hazard bylaws may contain standards that prohibit placement of damaging obstructions or structures, the use and storage of hazardous and radioactive materials, and practices that are known to further exacerbate hazardous or unstable natural conditions. They may also require flood and hazard protection through elevation, flood-proofing, disaster preparedness, hazard mitigation and other techniques, provision of adequate flood drainage and other emergency measures, provision of adequate disaster-resistant water and wastewater facilities, and establishment of restrictions to promote the sound management and use of designated flood and hazard areas. 24 V.S.A. § 4424(2)(B).

Repairing the damage after a major flood will probably be a joint effort involving the town, state and federal governments. The Vermont Emergency Management Division, part of the Public Safety Department, is headquartered in Waterbury. The Federal Emergency Management Agency (FEMA) becomes involved when the President declares a federal disaster situation. In addition to being there after the fact, these two instrumentalities periodically sponsor disaster management planning courses for town officials and fire and rescue personnel to help set up

plans for dealing with a variety of emergency situations. Also, the Vermont Agency of Transportation is quite helpful in providing engineering advice and expertise for repairing and replacing highways and bridges. For more information on emergency management, see Section D, above.

F. ELECTRIC POLES AND WIRES

The selectboard also has significant authority over the placement of electric, telephone and cable television cables above ground.

The statutes authorize the placement of lines or wires underground or "upon" a highway (30 V.S.A. § 2502), subject, of course, to the selectboard's permission under 19 V.S.A. § 1111(c). However, if such placement is "inconvenient or inexpedient," the utility can apply to the selectboard, which shall determine the placement and in what manner the wires shall be erected. 30 V.S.A. § 2503. The selectboard must notify interested parties, certify its decision and record it in the town clerk's office; "such decision shall be final."

The selectboard may also direct a line of wires be placed at a greater height or underground where it crosses a town highway. If a line is placed contrary to its direction and left unchanged, the board may remove the line and recover the expense. 30 V.S.A. § 2504. A resident can appeal the placement of such wires on town roads "in front of his [or her] residence" to the selectboard, which, upon notice and hearing, decides what, if anything, should be done. 30 V.S.A. § 2505. No tree located within a town highway may be cut or injured by the placement of such wires without the permission of the selectboard unless the adjoining owner or occupant agrees in writing. 30 V.S.A. § 2506.

If damage occurs to abutting landowners during the placement of wires along a town highway, they may appeal to the selectboard, which shall appraise the damage. Such damage must be paid for unless appealed to superior court. 30 V.S.A. § 2511. The selectboard also has the power to require that any person installing new lines along town highways place them on existing poles and to reimburse the pole owners a "fair proportion of [the] expense" up to one-half the estimated original cost of construction; and to restrict the removal or movement of such poles. 30 V.S.A. §§ 2515, 2516, 2518. Lastly, the selectboard may authorize and regulate persons constructing lines for private use. 30 V.S.A. § 2521.

Along state highways, the state transportation board makes the decisions that are outlined above and given to the selectboard along all town highways. 30 V.S.A. § 2501.

Although cell phones have made public telephones less important, selectboards are authorized to permit the construction, erection and maintenance of public telephones and telephone booths within the limits of public highways, sidewalks, parks and parking areas, "when consistent with the public interest under such reasonable rules, regulations and arrangements as they may prescribe." 30 V.S.A. § 2530. Notice must be given to adjacent landowners.

G. PURCHASING EQUIPMENT

A selectboard derives its authority to be the purchasing agent for the town from several sources. Its general authority comes from 24 V.S.A. § 872 and the derivative ministerial authority for "general supervision" and "causing to be performed all duties" not committed to any particular officer. It also has specific statutory authority to "purchase tools, equipment and materials

necessary for the construction, maintenance or repair of highways and bridges." 19 V.S.A. § 304(3). Lastly, when a town adopts the town manager form of government, one of the specific duties given to the manager under the statute is "to be the general purchasing agent of the town and to purchase all supplies for every department thereof." 24 V.S.A. § 1236(3).

Generally, the purchase of equipment is preconditioned upon the appropriation of funds by a vote of the town. Note the subtle difference between "purchasing" and "appropriation of funds." It is the selectboard that purchases; it is town meeting that appropriates the funds to finance the purchase. Though the law does not say so specifically, conventional wisdom holds that if the purchase will entail the payment of town money, the voters must concur through the act of appropriating funding. This does not require a specific article, but can be a line item in a budget.

The one possible area where a vote of the people may not be a prerequisite is where the town is under statutory mandate to perform a duty. For instance, towns are mandated by statute to "manage and regulate "the storage, collection and ... disposal of solid waste within their jurisdiction." 24 V.S.A. § 2202a(a). What happens when the voters refuse to provide funds to purchase equipment necessary to comply with this state mandate? The first option may be to find some other means to accomplish it (e.g., contracting out, using existing equipment or renting the necessary pieces), but the question may still remain whether the voters have appropriated the funds to do this.

If there was no choice but to make a purchase, we feel the statute would oblige you to do so. Remember that in Vermont, local governments – and each position or body, including town meeting – has only that authority provided it by the Legislature (Dillon's Rule). If the Legislature requires something be done, a town – or voters in the town – has no choice but to comply.

Selectboards have several choices as to methods of purchase. First, they may purchase equipment outright with cash provided by a town appropriation. Second, they may purchase it and finance the purchase through a loan or bond. (See 24 V.S.A. § 1786a.) Third, towns may establish and contribute annually to an "equipment fund" to provide for the periodic replacement of equipment. Normally, carrying forward funds from year to year is not allowed, but 24 V.S.A. § 2804 allows voters to establish reserve funds for such purchases. Annually, some town budgets include amounts – usually based on hourly rates for use of each piece of equipment – that will cover the purchase of new equipment, as it is needed. If approved by the voters, the money is deposited in the reserve fund and expended by the selectboard on the purchase or lease-purchase of the replacement equipment.

Any lease that lasts longer than one year should include a "non-appropriation" clause to protect the town should voters in future years refuse to appropriate the lease funds due. A lease usually runs three to five years with monthly payments throughout the term, but a town budget can only appropriate funds for the current year. Therefore, if a town enters a three-year lease and the budget line item for payments is defeated in the second year, the town has a problem. A "non-appropriation" clause basically makes the lease cancelable if funds are not appropriated in subsequent years.

H. INTERMUNICIPAL AGREEMENTS

There are several methods available for towns to work cooperatively. They range from handshake deals that swap the plowing and sanding of certain roads more accessible from a

neighboring town than from the town's own garage to shared permanent structures with their own enabling legislation. Services that are shared include specialized highway equipment, tax sharing and pooling for insurance purposes.

The statutes provide for several types of cooperative efforts, from specific areas such as sharing of town manager (24 V.S.A. § 1232) and fire mutual aid systems (20 V.S.A. §§ 2981, 2992), to the general enabling legislation, Intermunicipal Cooperation and Services, in Title 24, Chapter 121. Two different structures are contemplated under the general law: union municipal districts, in which a new legal entity is created, and interlocal contracts. Either type of agreement must first be recommended by a joint survey committee, comprised of three members from each community, one of which must be a member of the planning commission. A representative of the regional planning commission must be chosen by the municipal commission representatives to be an *ex officio* member. 24 V.S.A. §§ 4831-4833.

Either type of agreement must be approved by the State of Vermont attorney general. 24 V.S.A. § 4802. The union municipal district must be approved by a vote of each town by Australian ballot (24 V.S.A. § 4863), whereas the interlocal contract must be approved by the legislative body, subject to approval of the necessary expenses by the voters. 24 V.S.A. § 4901.

An alternative to using the intermunicipal cooperation processes set up in the statute would be to have a special act of the Legislature authorize the exact operation you have in mind.

I. PUBLIC FORESTS

1. **Town Forests.** There was explicit authority for towns to acquire land by gift or purchase for town forests in 24 V.S.A. § 2407, which appears to have been in effect from 1951 until it was repealed in 1985. The current statute, 24 V.S.A. § 2408, provides that if a town already had a forest when section 2407 became effective, or subsequently acquired one under authority of that section, the town is deemed to have a municipal forest. Since the repeal of section 2407, the explicit authority to purchase land for a forest is gone, but the town may still purchase land under the authority discussed in Chapter 14, Section D, of this handbook.

   A town may maintain a municipal forest which is "primarily devoted to producing wood products, maintaining wildlife habitat, protecting water supplies, providing forest recreation and conservation education." 10 V.S.A. § 2651. The forest must be a real one and not merely landscaped areas around buildings or playgrounds. When a town votes money for purchase of a town forest, it is eligible for any available state or federal matching funds. If the town subsequently sells a part of the land, it must return that portion of the money that was provided by the state and federal governments. 10 V.S.A. §§ 2652, 2655. If the town already owns a lot that the commissioner of the Department of Forests, Parks and Recreation deems suitable for a town forest, it may be designated as such and managed with the advice of the commissioner. Fire protection of the town forest is the responsibility of the town fire warden, who is appointed by the commissioner. 10 V.S.A. § 2641.

2. **National Forests.** Large tracts of land in many Vermont towns make up the Green Mountain National Forest. Questions frequently arise concerning the authority of the National Forest Service (NFS) to acquire land without the approval of the selectboard in the town in which the land is located. In 1 V.S.A. § 554, the State consents to the acquisition of land by purchase, gift or condemnation, which, in the opinion of the federal government and the State, may be needed for the establishment, consolidation and extension of national forests in

Vermont. However, the consent is limited to 43 towns and two gores in the state and is conditioned on the following requirements: the acquisition of land for the national forest must be approved by a state board consisting of the Governor, Lieutenant Governor, Attorney General, Commissioner of the Department of Forests, Parks and Recreation and Commissioner of Agriculture; and this board may act on a specific parcel only after it has the written approval of the legislative body (selectboard) of the town or the supervisors of an unorganized town or gore wherein the land is located.

However, no federal statute or rule requires the NFS to receive permission from a local legislative body prior to acquiring land. While Green Mountain National Forest representatives typically do consult with local selectboards on prospective purchases within their towns, it is unclear whether the state or a particular town could compel them to do this if for some reason they chose not to. This leaves towns within the National Forest with the burden of maintaining open lines of communication with NFS personnel to keep abreast of acquisition plans within the town. Hopefully, this can help avoid a confrontation over a proposed acquisition.

There is some payment made in lieu of property taxes to school districts from the National Forest. For details on these funds and their distribution, see 1 V.S.A. § 557.

J. PUBLIC PARKS

The creation of public parks is authorized in 24 V.S.A. § 2501. As outlined in that section, the process is initiated by a petition which must be signed by "a fifth or fifty or more" of the voters or landowners in town and submitted to the selectboard. Upon receipt of the petition, the board must respond in the same manner as it would to a petition for highway changes in 19 V.S.A. §§ 708 et. seq. The board must examine the property and hold a public hearing, after which it makes a decision, presumably based on the same standard as for highway decisions, that of "the public good, necessity and convenience of the inhabitants of the municipality." 19 V.S.A. § 710. The authority to condemn land in order to create a public park is implied in the use of the term "awarding damages," since the board would have to determine damages to be awarded if it took private land for the creation of a public park. In addition, the authority to condemn land derives from the fact that the procedure for creating a park is procedurally the same as that for creating or relocating a highway that involves condemnation of land and awarding of damages. 19 V.S.A. §§ 710, 712. If the owner of a property is aggrieved by the selectboard's decision, he or she may pursue the various remedies provided in 19 V.S.A. §§ 725, 726, 740 and 743.

K. SHADE TREES

Trees are a major component of Vermont. The beauty of Vermont depends in large part on its trees, and its financial health depends heavily on visitors who come to hike, camp, purchase maple syrup, sit by wood fires or to just look. The long-term importance of trees is reflected in the number of Elm Streets and Maple Avenues and in the fact that, without trees, we might not *be* the Green Mountain State.

The selectboard has the power "To provide for the location, protection, maintenance and removal of trees, plants and shrubs ... on or above public highways, sidewalks, or other property of the

municipality." 24 V.S.A. § 2291(3). To implement this, the board must appoint a tree warden and may adopt an ordinance concerning trees. 24 V.S.A. §§ 871, 2291(3), and 2506.

Chapter 67 of 24 V.S.A. gives the tree warden broad authority to oversee trees on public property by developing a preservation plan for trees and by planting, maintaining, pruning and removing trees. Trees may be maintained for shade or ornamental purposes and may be pruned, removed or treated for the sake of the tree or for public safety reasons. The tree warden should work with abutting landowners to control insect pests or tree diseases. He or she may consult with the Commissioner of Agriculture concerning serious infestations or disease and follow the Commissioner's recommendations for controlling the problem, even to the extent of treating trees on private property. 24 V.S.A. §§ 2504, 2511. He or she is authorized to enforce all laws applicable to public shade trees and to prescribe rules and regulations concerning trees. 24 V.S.A. § 2506. Funding for a tree program may come from the town, and financial or other agreements may be made with abutting landowners, other government agencies or private entities for the purpose of caring for shade trees. 24 V.S.A. §§ 2503, 2507.

Public shade trees, especially in the residential part of a town, may not be cut or removed without permission from the tree warden and/or a public hearing unless the tree is infested, diseased or a safety hazard. The decision of the tree warden is final unless he or she is an interested party, in which case the final authority is with the legislative body. Penalties for unauthorized damage to a public shade tree range from $50 to $500 per tree. 24 V.S.A. § 2510. In addition, there could be criminal charges under 13 V.S.A. § 3606. For more information, visit the Vermont Urban and Community Forestry Program at www.vtcommunityforestry.org, or call the Program at (802) 223-2389.

L. RECREATION

A municipality may be involved with recreation in two ways. First, it may actually provide certain recreational facilities or programs. Second, it may regulate certain types of recreation within its borders.

"Municipalities, singly or jointly, may establish, maintain and conduct a system of public recreation ..." and they may issue bonds to fund recreational projects. 31 V.S.A. § 202. Although this statute does not specifically mention direct appropriation of tax revenues for recreation, that is implied in the wording of sections 201 and 202 which allow cities and incorporated villages to appropriate funds for recreation. Section 201 limits the amount to be appropriated to not more than four percent of the grand list.

Many recreation departments operate on an "enterprise fund" basis, charging user fees for programs in order to help fund them. There is a philosophical debate as to whether it is fairer to have all taxpayers fund each program through taxes so that they are equally available to every would-be user or to have users only pay, taking the burden off the general taxpayer. Each town must make this decision on a program-by-program basis. Some towns make recreational programs and facilities available to all town residents for free or at a reduced cost but charge user fees or slightly higher fees to non-residents. Administration of the recreation program may be done in any of the ways mentioned in 31 V.S.A. § 203.

The statutes also provide for certain programs which may be funded by appropriations. "Free musical entertainments" may be funded up to the limits set by 31 V.S.A. § 204. Fairs and

exhibits "intended to promote the interests of any branch of agriculture, mechanical arts or any of the liberal arts" are authorized under 24 V.S.A. § 2301. A municipal forest, used partly for recreation, may be established and, if the town votes money for its forest, it may be eligible for matching state and federal funds. 10 V.S.A. §§ 2651, 2652.

The use of surface waters for recreational purposes is under the aegis of the State Natural Resources Board. This is the source of regulations regarding boating, water skiing, etc. However, of interest to towns is the possibility of grants-in-aid for the purpose of fighting "aquatic nuisances." 10 V.S.A. § 922. These nuisances are defined as "undesirable or excessive substances or populations that interfere with the recreational potential of a body of water" (e.g. milfoil, algae, sediment). 10 V.S.A. § 921.

Vermont towns are host to many other recreational activities that occur independently of municipal recreation departments or any other type of town sponsorship. Some of these activities may, however, be regulated by the towns to ensure that they are done safely and to minimize their impact on citizens. Following is a list of recreational activities that may be licensed or regulated in some way by municipalities, and the statutes that pertain:

- All-terrain vehicles – 23 V.S.A. Chapter 31;
- Motor vehicle racing – 31 V.S.A. Chapter 7;
- Snowmobiles – 23 V.S.A. § 3210;
- Coasting (sliding) on sleds – 31 V.S.A. § 511;
- Horse and dog racing – 31 V.S.A. Chapter 9;
- Menageries, wild west shows, itinerant shows, carnivals, games of chance, theater shows, movies and concert halls – 31 V.S.A. Chapter 9;
- Dance halls, pool halls, bowling alleys – 31 V.S.A. Chapter 11;
- Use of alcoholic beverages in public – 24 V.S.A. § 2291 (17) and (18); and
- Firearm use or discharge – 24 V.S.A. §§ 2291(8), 2295.

The authority granted under these different statutes varies widely and is frequently subject to other regulatory powers of the state. Check each statute carefully to assure that any action you take is proper. (See also Chapter 9, Ordinances and Regulations.)

M. LIBRARIES

A municipality may provide public library services to its residents in several different ways. First, it may establish its own library. 22 V.S.A. § 141(a). Second, it may contract with another municipality or a library corporation to supply services. 22 V.S.A. § 141(b). Third, it may help to support a library held in trust for its residents. 22 V.S.A. § 141(b).

In order to support a library or library services, a town may appropriate money for facilities, maintenance and care (22 V.S.A. §§ 141, 142), or it may vote to issue municipal bonds "for the cost of capital improvements to any privately-owned, municipality-supported library situated within the municipality for use of residents." 24 V.S.A. § 1752a.

There are several considerations to keep in mind if your town supports a private library. First, the finances and governance of the library will be conducted independently of the town and will not be under the direct control of the selectboard. The board has a fiduciary responsibility, however,

to make sure that town funds appropriated to the library are used in a way that benefits the town. Most boards do this by making the article(s) appropriating money to a private library clear in their intent (for general support of the library, for the purchase of a library computer, for the construction of a children's reading room, etc.). With the specific wording of an article to back it up, a board can request receipts and/or other proof from the library that the funds donated by the town are being used for the purposes envisioned by the voters.

Second, the Americans with Disabilities Act (ADA) requires local government programs and services to be accessible to the disabled. A municipality must ensure that this requirement is met even if it is paying a company to provide the service or contributing to a private organization that does so. If your local, private library is accepting funds from the town, the town may ultimately be held responsible if accessibility issues arise there.

Municipal libraries are governed by a board of trustees that is either elected or appointed by the legislative body. 22 V.S.A. § 143. The board must report on the condition and management of the library to the annual meeting of the municipality. 22 V.S.A. § 144.

The State Department of Libraries is charged with the "duties and functions" of serving other libraries, including municipal and school libraries, by providing reading materials and technical assistance. The Department of Libraries also administers state and federal grants for libraries and provides professional consultation and educational services for librarians around the state. 22 V.S.A. Chapter 13.

Finally, if you think your library's fines are outrageous and unreasonable, take note that, under 22 V.S.A. § 111, a public library may be awarded fines of up to $500.00 per offense and "each piece of library property shall be a single offense."

N. TOWN SCHOLARSHIPS

The voters of a town may appropriate money from the general fund for all or part of one or more students' college expenses. 16 V.S.A. § 2535. The statute specifies those persons who shall make up the "board of selection" which shall select students "on the basis of scholarship and need."

O. HANDICAPPED ACCESSIBILITY

There is much recently developed law concerning discrimination against persons with disabilities. The most far-reaching is the Americans with Disabilities Act (ADA), enacted by the federal government in 1990. The ADA prohibits discrimination against people with disabilities in all programs and activities of local government.

Towns that seek to make their services accessible to the disabled should be familiar with the ADA's Title II, "Public Entities." (Title I covers employment. [As an employer, a town cannot discriminate against the disabled in any way in its recruitment, hiring, advancement, discharge, compensation, job training and other employment terms or conditions.] Title III covers public accommodations, Title IV covers telecommunications and Title V covers miscellaneous provisions.)

Briefly, Title II requires that all municipal programs, services and activities be accessible and be offered in a setting and manner that is as close as is reasonably possible to those offered to non-disabled citizens. When determining exactly what these programs, services and activities are, a

selectboard member must widen his or her vision to include almost all aspects of town government. A disabled person should be able to be a member of a town board or committee, participate in town meetings, have access to all town facilities and records and be able to apply for all town employment opportunities, to name just a few programs and activities that must be accessible. Facilities (buildings, roads, sidewalks), communications and public transportation equipment must also be accessible. Some exceptions and some flexibility are allowed by the ADA. For example, programs can be relocated to accessible facilities, or auxiliary aids could be provided to assist a disabled individual to participate. Further, a municipality does not have to make a program accessible if to do so would "fundamentally alter the nature of the program, activity or service" or would result in "undue financial or administrative burdens."

At the state level, the Department of Labor is charged with enforcing state standards for architectural barriers and the accessibility of public buildings. 21 V.S.A. §§ 271-277. The Department also chairs the state Architectural Barrier Compliance Board, which can grant a variance to these standards under certain conditions.

Vermont's laws prohibiting discrimination against persons with disabilities in the provision of public accommodations are set out in 9 V.S.A. Chapter 139. That chapter is to be construed to be consistent with the ADA. 42 U.S.C. §§ 12101 et seq. In effect, it essentially adopts the ADA as state law.

Finally, all municipal building codes must comply with the ADA. There are extensive and detailed ADA regulations covering not only ramps, door widths and elevators, but also the height of water fountains, visual and tactile signs, hardware on doors and bathroom fixtures, turning space for wheelchairs, stairway railings and carpets. Obviously, anyone drafting a municipal building code must be familiar with the ADA as well as state statutes.

P. MENTAL HEALTH

The subjects of mental illness and mental retardation are covered generally in 18 V.S.A. Chapter 171-215. Involvement of local government in the mental health field is minimal, although 18 V.S.A. § 8909(b) encourages the working together of community mental health centers and governmental agencies in the interests of efficiency and economy.

The law allows "interested" persons or parties to become involved in dealing with mentally ill or retarded individuals. An interested person may include certain town officers. 18 V.S.A. §§ 7101(9) and 9302(4). An interested person may commence the process for having an ill or retarded person committed for involuntary treatment. 18 V.S.A. § 7612.

If you believe that you are an interested person and are about to become involved, be advised that you should know how the law defines mental illness, mental retardation and *many* related terms before you act. The law functions to protect the rights of everyone, and specific criteria must be met before people thought to be mentally ill or retarded can be deprived of their freedom or right to make their own decisions.

Finally, 24 V.S.A. §§ 4412 and 4413 provide some limitations on local zoning bylaws as they apply to some group homes, hospitals and institutions.

Q. BURIALS: PAUPERS AND VETERANS

A town may be required to arrange and pay for the burial of a resident who dies in the town and who did not have the necessary assets to pay for his or her burial. 33 V.S.A. § 2301(c). Note that the town has the authority to arrange the burial. This means that a relative of the deceased may not arrange and carry out the burial and then send the bill to the town. Towns are sometimes asked to pay for a burial of a resident who owned property in town but died without cash or other assets to pay for a funeral. The town is not responsible for funding such a burial any more than it would be responsible for paying the property taxes of a landowner who has no cash or other assets.

When the town has paid for a burial, the Department for Children and Families (formerly the Department of Social Welfare) shall reimburse it up to $250 for expenses incurred. The cases in the statutory annotations to this section make it clear that money from the Department or the town is to be used only for burial expenses and must go directly to reimburse the town or to pay the funeral director. Funeral directors should know the pertinent regulations concerning burial at public expense and should advise the person making the arrangements for burial of those regulations. 33 V.S.A. § 2301(a)(4). Definitions of "burial" and "funeral" are found in subsection (g) of the statute.

There are also funds available to assist in burial expenses and the cost of a headstone for an honorably discharged soldier, sailor, member of the armed forces of the United States or [his or her] widow[er]. 20 V.S.A. § 1604. If no official of a veterans' organization can testify to the fact that the veteran or widow[er] had insufficient assets to pay for burial and headstone, then the majority of the selectboard or the mayor of the city where the person lived may certify that fact under oath, after which the Commissioner of Finance and Management of the state shall provide up to $150 to help defray the costs.

R. PUBLIC TRANSPORTATION

Public transportation is important for individuals who do not own or have access to a vehicle, for communities wishing to offer their citizens an alternative to private transportation, and for the environment. Moving people easily and economically helps workers get to jobs and customers to businesses and shopping facilities, plus it saves energy and decreases pollution. The rural and remote character of Vermont makes it difficult for many towns to even imagine public transportation, but it is a service that municipalities have the authority to provide, either on their own or with other towns.

Should a municipality choose to provide public transportation, it will find that the State of Vermont's policy is to encourage and plan for public transportation and to help fund projects. 24 V.S.A. Chapter 126.

For the statutory authority needed to operate public transportation systems, municipalities should consult 24 V.S.A. § 5088(7). Municipalities may also join together to provide public transportation services through either a regional transit authority or a regional transit district. 24 V.S.A. Chapter 127. A regional transit authority is formed when two or more municipalities vote to join together to provide services within their geographical areas. This creates a separate municipal corporation which has the powers usually granted to such entities and which are spelled out in 24 V.S.A. § 5104. These powers include the power to borrow money, to acquire

property by eminent domain, to promulgate rules and regulations and to set fares and rates. A board of commissioners operates the authority and consists of two commissioners from each member municipality who are appointed by their legislative bodies for three-year terms. The commissioners have the power to hire personnel, fix their salaries and delegate responsibilities to them. 24 V.S.A. § 5107.

Annually, the commissioners prepare a proposed budget and present it to a warned meeting of the residents of the member municipalities. They then review the budget in light of public input and adopt a final budget for the fiscal year. Following the adoption of the budget, the treasurer of the authority apportions the amount to be contributed by each member municipality according to a formula based on mileage or on some other formula approved by the board and the members. The treasurer notifies each member of the amount assessed; the member then assesses such tax as is necessary to raise that amount. 24 V.S.A. § 5108. The board must prepare an annual report and submit it to the legislative body of each member. The operating year must be a fiscal year beginning on July 1. 24 V.S.A. § 5110. Termination of membership in the authority is governed by 24 V.S.A. § 5109.

Formation of a regional transit district is another way in which municipalities may join together to provide public transportation services. 24 V.S.A. §§ 5121-5129. In contrast to the regional authority, this is not a corporation. The district may be formed after studies by the municipalities and the state Agency of Transportation (AOT) have shown that the area to be served constitutes a reasonable transit district. At that time, voters may vote to create the district, with the approval of AOT.

The district shall have at least one member from each municipality appointed by its legislative body. There may also be "other members, who may be elected or appointed ... [as prescribed] by rule." 24 V.S.A. § 5124. The powers of the district, enumerated in 24 V.S.A. § 5125, include the authority to contract to provide transportation services outside of the member municipalities. The district is "exempt from sales, purchase and use taxes and from motor vehicle registration fees except those registration fees applicable to municipalities." 24 V.S.A. § 5127.

The board shall prepare a proposed budget for each fiscal year and send it to the legislative body of each member municipality. It *may* also call public meetings of the residents of the municipalities to present the budget to them. Following this, the board shall adopt a final budget and determine the contributions to be requested from each member. 24 V.S.A. § 5128.

Members of the board shall have no personal liability for actions taken in their official capacity and member municipalities shall have no tort liability. Total tort liability for the district is limited to $1,000,000. 24 V.S.A. § 5129.

CHAPTER 14
TOWN LANDS AND BUILDINGS

Vermont municipalities are the owners of a wide variety of lands and buildings. From the town hall to the town garage, from cemeteries to town forests, selectboards (or their delegates) are responsible for ensuring that these buildings and lands are well maintained and are safe for the municipal workers and members of the public who use them. Listed below are some of the properties a town may hold, with information on how they are administered. The general rules governing the municipal purchase and sale of property are also explained.

A. CEMETERIES

Town cemeteries are often one of a municipality's most beautiful and visited properties. The maintenance and administration of them, meanwhile, is much less in the public eye, as these tasks are usually accomplished behind the scenes by the selectboard or cemetery commission.

The authority to own and operate cemeteries is granted to municipalities in 18 V.S.A. §§ 5361, 5367 and 5373. Here, towns are also given the option to place their cemeteries under the control of either the selectboard or a cemetery commission.

If a town votes to have a cemetery commission, the commission automatically assumes the cemetery-related duties which were previously carried out by the selectboard. A town may vote to transfer the responsibility for the cemetery back to the selectboard, in which case the offices of cemetery commissioner terminate. 18 V.S.A. § 5381. Commissioners shall number three or five, with staggered terms of office, and vacancies may be filled by the remaining commissioners until the next annual meeting. 18 V.S.A. § 5374. Should the selectboard or cemetery commissioners neglect to carry out their duties in caring for the burial ground, fines may be imposed. 18 V.S.A. §§ 5363-5366. Additional responsibility for private cemeteries may also fall to the town if the cemetery has been abandoned and has become "unsightly." 18 V.S.A. § 5321.

Many towns enact bylaws to govern the operation of their cemeteries. 18 V.S.A. § 5378. Usually adopted by the cemetery commissioners, these regulations cover such topics as the care of lots (including endowments for individual lot care), rules of conduct (hours, permitted activities), interments, plantings and other changes to individual plots, specifications for memorial dimensions and materials, and the sale of plots. If you would like copies of sample cemetery bylaws, please contact VLCT.

Local officials in charge of cemeteries should be familiar with the general statutes regulating the permanent disposal of remains of the dead. 18 V.S.A. §§ 5319, 5320. Note, too, that these statutes also grant a private individual the ability to set aside a part of his or her land as a burial space for members of his or her immediate family. From time to time, selectboards, in their capacity as local boards of health, will receive requests for permission to establish such private burial plots. The Vermont Department of Health has issued a pamphlet of guidelines for the board (or local health officer) to consider when reviewing these requests. For a copy, contact the Health Department at PO Box 70, Burlington, VT 05402 (telephone 802-863-7200).

Land for use as a town burial ground may be purchased with public funds voted for that purpose, may be acquired through dedication and acceptance (express or implied dedication of land by a private owner for the public's use), by gift or by eminent domain. 18 V.S.A. §§ 5361, 5481-83.

The procedure for acquiring new land or additional earth or gravel needed for an established burial ground is spelled out in 18 V.S.A. § 5483. If a burial ground is to be discontinued and the remains of the dead are to be removed, 18 V.S.A. §§ 5369 and 5370 apply. The taking of any burial ground for another public use may not be done without permission from the town, cemetery association or the Legislature. 18 V.S.A. § 5318.

Several state statutes regulate the holding and passing of title to cemetery plots. Cemetery commissioners should be familiar with these laws so that they may advise citizens how to obtain or transfer ownership of a particular plot. Cemetery lots may be sold, but only if a plat exists for the lots. 18 V.S.A. § 5312. Deeds to lots must be recorded by the town clerk. 18 V.S.A. §§ 5311, 5376. The proceeds from such sales are subject to 18 V.S.A. § 5377. Burial records must be maintained and must be open to the public. 18 V.S.A. § 5313.

Generally, any moneys accrued from the sale of cemetery plots must be used directly for the operation and maintenance of the cemetery or placed in a perpetual care fund. They may not be used for any private gain. 18 V.S.A. §§ 5303, 5314, 5315. Any excess funds may be placed in a perpetual care fund and invested according to 18 V.S.A. § 5309, which lists permissible investments, including U.S., municipal or State of Vermont bonds, mortgage notes, shares in Vermont or federal savings and loan associations (FDIC insured), and common or preferred stock. Further restrictions on the investment of grants, gifts or bequests made to the town in trust for cemetery purposes are found in 18 V.S.A. § 5384.

Cemetery property may not be mortgaged or otherwise encumbered. 18 V.S.A. § 5316. Land found to be unsuitable for burial purposes may be sold and the proceeds may be used for the purchase of other land to be used for burial purposes or for the care and maintenance of the existing cemetery. 18 V.S.A. § 5315.

Commissioners must submit an annual report to the town auditors, who must audit it, file a report with the town clerk, and include it in the town's annual report. 18 V.S.A. §§ 5379, 5380.

"All cemetery lands, buildings and property, and the proceeds thereof ... which have been platted and devoted to or held exclusively for cemetery purposes" are exempt from taxation. 18 V.S.A. §§ 5317, 5376. Burial lots which remain unoccupied, the whereabouts of the person having legal title being unknown, may revert to the town after 20 years according to a procedure set out in 18 V.S.A. §§ 5533-37.

The town may be called upon to provide a headstone without charge for a deceased person whose estate does not have the funds to pay for one, and whose grave remains unmarked for three years following his or her burial. 18 V.S.A. § 5371. Finally, the selectboard or the cemetery commissioners may be asked to adjudicate the need for a permit allowing an applicant "to enter a graveyard enclosure to which there is no public right of way." 18 V.S.A. § 5322.

B. GLEBE LANDS

"Glebe lands" or "lease lands" are a type of public land referred to by the Vermont Supreme Court as a "somewhat unusual Vermont institution." *Mikell v. Town of Williston*, 129 Vt. 586, 587 (1971). Many of the original charters for Vermont towns contained reservations of parcels of land for the Church of England (pre-Revolutionary) and for the use of schools, colleges, or the support of the ministry. *Id*. at 587. After the American Revolution and the separation of church and state by the Constitution, lots reserved for the church or the ministry were generally

dedicated to the use of schools and the care of such lands was placed in the hands of the respective town selectboards. 24 V.S.A. § 2401; *Spaulding v. Fletcher*, 124 Vt. 318 (1964). Those public lands could be leased and the rents received "shall be annually paid into the treasury of the town." 24 V.S.A. § 2403. The leases of such public lands may be "durable leases, conveying to the lessee ... a lease of the land for 'as long as grass grows and water runs'" or phrases of similar durability. Although 24 V.S.A. § 2404 says that rental money received from land originally dedicated to religious purposes shall be distributed to "religious societies," this requirement has since been declared unconstitutional by the Vermont Supreme Court and the rental moneys must "become part of general revenue of the town." *Mikell v. Town of Williston*, 129 Vt. 586 (1971).

For many years it was understood that the town could not divest itself of these public lands, but could only lease them. However, 24 V.S.A. § 2406 authorizes towns to sell these lands, with two conditions attached. First, the leaseholder must be given preference as the grantee of the title, and, second, the funds received "shall be kept intact, in trust ... and the income only shall be used for the purposes for which such lands were originally granted." 24 V.S.A. § 2406. This second condition means, for example, that if the town decides to sell a lot that was originally designated for a school for a sale price of $20,000.00, this lump sum must be held intact as an endowment. Only the interest from it may be used and, furthermore, the interest must be used for school purposes. Section 2406 also provides that once the land is sold and ceases to be public land, it becomes taxable in the same way as any other land in town.

C. TOWN BOUNDARIES

When adjoining towns are unable to agree as to the location of the boundary line between them, they may petition the superior court to appoint commissioners to locate the line. The court must appoint three disinterested persons, one of whom must be "a practical and competent surveyor." 24 V.S.A., Chapter 47. The commissioners conduct a hearing, view the premises and make recommendations to the court. Their hearing must be conducted as a quasi-judicial proceeding.

The authority granted in this chapter is limited to the authority to locate the boundary line accurately, not to change its location. In order to actually alter a boundary, petition must be made to the Legislature, as provided in 2 V.S.A. § 17. If the towns have erroneously agreed to and have used the wrong boundary, that will not change the line if it can be accurately determined.

D. PURCHASE OF LAND

The authority for towns to purchase land derives from several sources. Some town charters expressly authorize the purchase and sale of land. There are also statutory authorizations for some specific purposes, such as sewage treatment, 24 V.S.A. § 3613, and conservation purposes. 10 V.S.A. Chapter 155. (If your town is purchasing land under a specific statute authorizing it to do so, please note that the statute may impose conditions on the purchase process, such as the requirement for a public vote, a time limit on bond issues, etc.) Finally, there is the implied authority to purchase land since, from time to time, land purchases are necessary for the effective functioning of the town.

The selectboard acts in a fiduciary capacity on the town's behalf in the purchase or sale of property. This means that the board and the individual members on it have a duty to be fiscally

responsible, to act in the best interests of the town and to avoid any conflict of interest when creating a contract for the town. As in all matters that come before the board, it is best to avoid even the appearance of impropriety. Remember, too, that while the board has the authority to purchase property on behalf of the town, it is ultimately the voters who will approve the expenditure of money to complete the purchase. In situations where a purchase opportunity comes up before the voters have appropriated the necessary funds, selectboards often incorporate a clause into the purchase agreement that makes the purchase contingent on town voter approval (at the next special or annual meeting) of the necessary funds. This guarantees that the town does not lose the opportunity to purchase the property while waiting for approval of the purchase funds.

E. SALE OF LAND

Real estate owned by the town, village or town school district may be conveyed by an agent who is either elected or appointed for that purpose. 24 V.S.A. § 1061. This office is different from that of "town agent" described in 17 V.S.A. 2646(11). The authority to sell town property derives from the same sources as the authority to purchase land that were mentioned above. In 1994, however, the Legislature took up the issue of municipal authority to sell real estate. In the end, the Legislature stopped short of taking away the selectboard's authority to sell, but it did add several procedural steps to the process of selling town land.

These steps are found in 24 V.S.A. § 1061. According to this section, notice of the terms of the proposed sale must be posted in at least three public places in the municipality and published in a local newspaper. If petitioned within 30 days of the posting and publication, the selectboard must ask the voters at the next special or annual meeting whether or not the town should sell the property. As an alternative to this procedure, the board may go directly to the voters and present the question for approval at an annual or special meeting. For boards faced with a time constraint on a sale and interested in saving the cost of a special meeting, the first procedure is preferable (assuming no petition is filed).

There are several exceptions to the requirement that boards follow the above procedures: if the sale is directly related to highways, public water, sewer or electric systems, or if it involves real estate used by housing authorities under 24 V.S.A., Chapter 113. Also, a town or village that has provisions in its charter addressing the conveyance of real estate is subject to the charter provisions where they conflict with the statute. Finally, 24 V.S.A. § 1061 does not impair a municipality's ability to deal with land it holds in a fiduciary capacity (i.e., holding a mortgage, land acquired through delinquent taxes, land held in trust, etc.).

Note, too, the provisions of 16 V.S.A. § 562(7), dealing with the purchase and sale by the school board of school buildings or sites. This statute requires the school board to seek voter approval before buying or selling school property.

The sale of glebe land is a special case governed by 24 V.S.A. §§ 2401 et seq. and discussed in Section B above.

F. EMINENT DOMAIN

The concept of eminent domain balances the power of the government to take private land for public use against the right of the private landowner to receive just compensation for the taking

of his or her property. The U.S. Constitution provides that "...private property [shall not] be taken for public use, without just compensation." U.S. Constitution, Amendment V. In Vermont, "private property ought to be subservient to public uses when necessity requires it; nevertheless, whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent in money." Vt. Constitution, Chap. I, Art. 2d.

In spite of the power of eminent domain which is inherent to the state, that power "cannot be exercised without a legislative declaration of its objects and purposes, and of the methods and agencies by or through which it shall operate. The statute must be definite and certain, and nondiscriminatory." McQuillin, *The Law of Municipal Corporations*, section 32.11, at vol. 11, 322 (3d ed. 1991). This means that, in order for municipalities to exercise eminent domain and condemn private property for public use, there must be legislation (state statute or charter provision) explicitly authorizing such action or Dillon's Rule will apply. (Under Dillon's Rule, remember, a municipality only has powers expressly granted, fairly implied, and essential and indispensable to its function.) Following is a list and brief description of the statutes that expressly grant municipal entities the power to exercise eminent domain.

a. 24 V.S.A. § 2805: a city, town, village or fire district may condemn land needed for buildings;
b. 24 V.S.A. § 1952: a city, town or village fire department may condemn land for a fire house or fire station;
c. 20 V.S.A. § 2606: a fire district may acquire land for buildings by condemnation;
d. 24 V.S.A. §§ 3602 and 3609: a municipal corporation may acquire necessary real estate and easements for sewage disposal by condemnation;
e. 24 V.S.A. §§ 3301 and 3303: a municipal corporation may acquire real estate and water rights necessary for a water works by condemnation;
f. 24 V.S.A. § 3342(c): consolidated water districts have the same power of condemnation as municipal corporations in (e) above;
g. 24 V.S.A. § 2801: selectboards may procure the right to lay aqueducts or pipes to supply "water for use in a town hall or watering trough on a public highway";
h. 30 V.S.A. §§ 2910 and 2914: a municipality may acquire an existing utility's plant by eminent domain and may acquire additional property by condemnation;
i. 24 V.S.A. § 3210: a municipality may acquire property by condemnation for urban renewal purposes;
j. 24 V.S.A. § 4012: municipal housing authorities may acquire property by eminent domain;
k. 5 V.S.A. § 651: a municipality or agency authorized to operate an airport may acquire property by eminent domain; and
l. 16 V.S.A. § 560: a school board may condemn land to be used for school purposes.

In addition to the statutes listed above, some municipal charters may provide specific authority of eminent domain. As mentioned in Chapter 10, Section C, land may also be condemned by the state or the town for use as roads.

The pertinent statutes frequently specify procedures to be followed in condemnation actions. It must be kept in mind that the power of eminent domain, like all government powers, must be

exercised in a fair and non-discriminatory way. Public necessity must be demonstrated and fair and adequate compensation must be provided.

A final consideration is that the state may be able to acquire land owned by a municipality by utilizing the state's power of eminent domain. The state's authority rests on the fact that its interests are seen to represent a broader base than a municipality's interests, which are viewed as more narrow, or "parochial."

G. SPECIAL MUNICIPAL PROPERTY

Several types of land may be owned by a town that differ in nature and purpose from the usual municipal properties (the town hall, roads, garage, recreation field, etc.). First are the glebe lands discussed in Section B, above. Second are lands owned by the municipality for the conservation purposes described in 10 V.S.A. Chapter 155. Third are "public funds" which may include land bequeathed or otherwise given to the town. 24 V.S.A. § 2406. Finally, there are "parks and shade trees." 24 V.S.A. § 2501.

Under 10 V.S.A. Chapter 155, land or certain rights or interests in land may be acquired by state agencies, municipalities or qualified organizations for certain purposes. Those purposes are to maintain present uses of undeveloped land, prevent accelerated development, preserve scenic natural resources, strengthen the recreation industry and provide for orderly growth in the face of increasing development. Chapter 155 allows towns to acquire real property or selected rights to real property by purchase, donation, devise, exchange or transfer. For example, the town might own the land outright or it might have only selected interests, such as the development rights, with all other rights remaining with another party.

In order to actually purchase land or rights, a municipality must use "authorized funds." 10 V.S.A. § 6302. Once it has acquired the land or selected rights, the town will be responsible for the administration or enforcement of the proper use of the land. Sales of such lands and other termination of rights are subject to 10 V.S.A. §§ 6304 and 6308.

Rights and interests acquired by a municipality are treated "as municipal ... with respect to taxation ..." 10 V.S.A. § 6306(a). Your listers should be aware that where property rights or interests have been acquired by a municipality, the owner of any remaining rights or interests may be taxed separately on his or her rights or interests. 10 V.S.A. § 6306 (c).

A third category of public land is real estate "held by a town in trust for any purpose, including cemetery trust funds." 24 V.S.A. § 2431. Such land is under the charge and management of the trustees of public funds elected by the town. The trustees must report to the town annually and shall "give bonds to the satisfaction of the selectmen ..." 24 V.S.A. §§ 2433-2434. Selectboards should be familiar with the terms under which this type of property was gifted or granted to the town. Often, such gifts come with restrictions on the use of the property (for example, a town beach that is to be used for access to a lake or pond by foot only, precluding the town from building a boat launch on the property) or on the use of the proceeds of the sale if the terms of the gift allow the town to sell the property.

Tucked away in Title 24 is a section that authorizes voters or property owners in a town to petition the selectboard to lay out a public park or square "for the erection of a soldiers' monument or for other public purpose." 24 V.S.A. § 2501. Remedies for someone not satisfied by the selectboard's response to such a petition are the same as those for a person unhappy with

the board's actions in laying out a highway. There is also fairly extensive law governing the care of shade and ornamental trees located within "public ways and places." 24 V.S.A. §§ 2502 et seq. For additional information and resources on caring for town trees, contact:

Vermont Department of Forests, Parks and Recreation
Urban and Community Forestry Program
103 South Main Street, Bldg. 10 South
Waterbury, VT 05671-0601.

H. RENTAL OF TOWN FACILITIES

Often, a municipality will receive requests from citizens to rent the town hall for weddings, meetings, classes, dances, or other, similar community events. Many towns do rent their facilities for such purposes, but do so under the provisions of a rental policy which clearly states the conditions to be met by the town and the renting party.

Such a policy should not be discriminatory in any way and should establish a rental fee based upon the town's actual cost to make the facility available. As you prepare your rental policy, keep in mind that once you open the town's facilities to outside groups, you must be prepared to do so for all groups that can satisfy the conditions of the policy. This means the politically acceptable monthly board meeting of the "Little People Day Care Center" as well as the potentially divisive "Concerned Citizens Against (fill in the blank)."

A typical rental agreement should include sections on purpose for which premises will be used, date and terms, rent, security deposit, cancellation, obligations of renter, required proof of insurance, non-liability of owner, limitations on assignment of the agreement to another party and restrictions on the use (for example, occupancy limits, alcohol policy, and cost of admission, if admission is allowed to be charged). Please contact the League if you would like a sample rental policy. It is also a good idea to check with your insurance carrier to find out if the company has any concerns or questions about rental uses of the town property it insures.

I. LIABILITY AND TOWN PROPERTY

In most Vermont towns, members of the public enter upon town property every day to do their business, be it to pay their property taxes, attend story hour at the library, take a knitting class at the recreation center, hike in the town forest or attend a zoning board hearing. As a result, there is constant municipal exposure to liability should the town's negligence result in a situation that poses a danger to the visiting public.

Although sovereign immunity may protect a town in many cases, it is important for a town to take steps to prevent potential liability. Most common are an array of safety and loss prevention programs to prevent dangerous situations from occurring. These efforts are made in conjunction with the purchase of comprehensive insurance coverage to protect the town financially in the unfortunate event that a dangerous situation does occur and results in an accident.

Safety and loss prevention programs help a municipality to identify and control potential risks. A typical program uses a variety of methods – including interviews with department heads, checklists, inspections and citizen complaint forms – to identify areas of potential risk before they become accidents. Careful maintenance schedules, frequent inspections, and compliance with state and federal regulations in design and operations can make town properties safer for the

citizens (and town employees) who use them. Risk control also involves minimizing the severity of a loss by careful accident reporting and follow-up with the injured party and the municipality's insurance company.

In choosing an insurance company, a town should look for a company that has expressed a willingness to represent the town's interests, shows an understanding of risk management and whose agents have experience working with local governments. The town may want to seek outside assistance in creating bid specifications for insurance coverage or for evaluating the effectiveness of the town's present coverage. For more information on coverage available through the VLCT's Property and Casualty Intermunicipal Fund, contact the League at (800) 649-7915.

CHAPTER 15
BUDGETING AND TAXES

Attention to the town budget is a major part of the selectboard's job throughout the year, and shouldn't be confined to the period when the board is drafting next year's budget. A budget is a plan of what the town expects to do in the upcoming year and how much it will cost taxpayers to do it. But, as the saying goes, "the best laid plans are the first to go awry." Property tax collections can plummet, a bad winter can wipe out the highway fund and prices for supplies can change with little notice. For these reasons, the selectboard should regularly review revenues and expenditures (most do it at least monthly) to make sure the town is staying within budgeted figures as the fiscal year progresses. Spotting a trend of deficient revenues or unexpectedly high expenditures (hopefully not both) earlier in the year rather than later gives a town more time to make adjustments to the budget.

A. PREPARING THE BUDGET

1. **Raising Revenue and Planning Expenditures.** In the fall and early winter, the selectboard's monthly budget review duties expand to include drafting next year's budget for consideration at town meeting. People tend to think of budgets as merely expenses – how much will we have to spend next year? However, before turning to expenditures, the board should give some attention to revenues. Are there ways to increase the town's income from non-tax sources?

   - *Have fees and fines been reviewed and updated to reflect the times?*
   - *Are state, federal or private grants available for certain projects?*
   - *Would the town benefit from charging user fees for some programs rather than paying for them with general tax dollars?*
   - *Are impact fees appropriate when there is new construction?*
   - *When there is money on hand, is it invested so it will earn a decent rate of interest?*

   The next step in preparing the budget is to plan expenditures. There are two aspects of that process. First is the actual coming up with figures, subtotals and totals. The second and more difficult aspect is preparing to justify those numbers when questioned by the taxpayers. (The budget really belongs to the voters. The selectboard merely prepares a *proposed* budget. Therefore, explaining and justifying the proposal to the voters is a key factor). The best way to deal with both of these tasks is to **START EARLY**. Gather factual information (old budgets, prices, estimates, etc.). Get your road commissioner, town clerk, law enforcement officers and others to work on their individual budgets early and insist on adequate documentation and justification. Talk to or meet with the school board about their budget. Then, when the total budget is developed, decision-making on justifiable expenditures, priorities and cuts will be much easier. Hard facts and adequate time to deliberate are the bases of a budget that is acceptable to the voters.

   This process can stretch from early fall, when department heads and elected officials are asked to submit their budget requests, to mid-January, when the warning for town meeting must be set. Throughout the budget writing process, the selectboard should be on the lookout for significant increases or decreases in the submitted figures and demand explanations for

them. Looking at the 'big picture' and using the budget as a policy tool, the board should also re-examine how services are offered, and not be afraid to propose changes to ensure that services are being delivered in the most efficient way. (Don't neglect to solicit proposed changes from your employees. Their "in the trenches" experiences can provide valuable ideas as you plan your budget.) Finally, citizen demand for a particular service may have increased or decreased, and the board will have to allocate resources accordingly.

As the final budget comes together, there will be some line items or special articles over which the town has very little control, such as assessments made against the town by the county or the solid waste district. The board must, however, be informed about the origin of such items since questions frequently arise at town meeting, such as "What is this for?" and "Do we have to pay that?"

On the other hand, there are ways to have some control over many line items. Shop around and gets bids whenever possible. Be aware that many suppliers with state contracts will also sell to municipalities at the state contract price. Find out if it would be more economical to contract out certain projects rather than having them done by town employees and equipment. Get information on whether it will cost more to maintain that town truck over the next two years than it will to buy a new one this year. Get low interest loans from the Municipal Equipment Loan Fund rather than from a bank. (The Fund is administered by the State Treasurer's Office, telephone 802-828-5193.) To find out about the state's surplus vehicle sale, which is held twice a year, contact the Agency of Transportation at 802-828-2657.

2. **Citizen Participation.** The role of citizens in this process varies from town to town. In some areas of the state, the formation of budget committees has become popular. These committees are not mentioned in state law and, therefore, have no independent authority or duties other than those the selectboard grants to them. Generally, the most important role for the committees is to make budget recommendations to the selectboard based on public hearings and committee members' concerns. The committees' work will, like all board-appointed committees, depend on the interests and skills of their members.

   In other towns, entities separate from the town have sprung up to act as fiscal watchdogs over the town and school budgets. Separately incorporated taxpayers' associations can be a useful resource to the board, but it must be said that they often have only one agenda – to cut expenses at all costs, with little regard to the consequences.

3. **Budget Article/Voting on the Budget.** As a selectboard member, you might think you are finished with the budget when it is all drafted and ready for the voters' perusal. However, separate monetary articles must be added to the town meeting warning if "requested by a petition signed by at least five percent of the voters ... and filed with the municipal clerk not less than 40 days before the day of the meeting." 17 V.S.A. § 2642. While petitions often raise the question of whether or not town meeting voters have the authority to vote on a particular issue, the state law clearly grants citizens the right to vote on budget matters and is worth repeating: *"A town shall vote such sums of money as it deems necessary for the interest of its inhabitants and for the prosecution and defense of the common rights..."* 17 V.S.A. § 2664. Examples of monetary articles that could come in by petition are a request for town funds for a bike path or a new fire truck.

This said, it is important to note that the Vermont Supreme Court has ruled on a citizen's right to place his or her own school budget on the warning by petition. In a case involving a school district which voted its budget by Australian ballot, the voters petitioned to add a separate article providing for an alternative budget. (The school board's article proposed a budget of $5 million and the petitioned article proposed a budget of $4 million.) The Court ruled the petition improper and said that the proposed alternative budget article did not have to be included in the warning. *Pominville et. al. v. Addison Central Supervisory Union*, 154 Vt. 299 (1990) Although this case involves school rather than town budgets, it can be interpreted to apply to towns which vote their budgets by Australian ballot, since 17 V.S.A. § 2680(c) is very similar to 16 V.S.A. § 711e, the law governing union school budget votes.

Budget articles, like all articles, must be stated as clearly and simply as possible so that voters know what the question is and what a "yes" or "no" vote will mean. Articles that ask for a single item or sum of money are usually easy and straightforward. For example:

- Will the voters authorize the purchase of a new tanker truck for the fire department for an amount not to exceed $80,000.00?
- To see if the town will vote to appropriate the sum of $1,000.00 for repair of the town hall roof?

Towns generally adopt the budget itself in one of two ways. Some ask in their budget article for the portion of the budget that must be raised from property taxes, after other revenues (state payments, fees, etc.) are factored in. Others ask for a figure that represents the total budgeted expenditures, recognizing that the amount to be raised by taxes will almost always be lower than the requested figure. Another very common practice is to vote on the town budget and the highway budget separately.

Each year towns wrestle with the question of requests for funding from various organizations. Some put each request on their warning as a separate article ("Shall the town give $200.00 to the Community Action Council or shall the town appropriate $250.00 for the Economic Development Council?") Other towns lump them all into one single article or put them as line items into the main budget, in which case those articles may be amended from the floor or may live or die with the rest of the budget on an Australian ballot vote.

When voting is from the floor, it is a good idea to present special money requests early so they can be voted on and resolved prior to the vote on the main budget. That way, the total town expenditure is evident when the main budget vote occurs. There is some variation in how towns voting from the floor vote on the final budget. One method is to amend the final budget upward to include the separate money articles previously approved. This, however, may result in double authorization to spend these funds. A preferable method is to *not* amend the final budget article upward, choosing instead to simply incorporate by reference the previously approved money articles into the final budget article.

Presenting the budget to the public in a "user friendly" way is becoming increasingly important. Remember that the budget is the board's way of telling the taxpayers how it proposes to spend their money on town business. The budget should be clear and understandable, like any other piece of communication that leaves the selectboard's office. For comparative purposes, it should show the figures for at least the previous fiscal year and for the current year. Many spreadsheet software programs have the capacity to produce graphs and charts that can make the numbers more understandable and interesting to look at.

Generally, budget items may be voted on by Australian ballot only if the town has voted to do so. 17 V.S.A. § 2680(c). An Australian ballot budget question presents voters with a simple "yes" or "no" choice, limits discussion of the budget to an informational hearing held within ten days before the vote and does not allow the budget to be amended (if the budget fails, the selectboard must warn another vote). In general, votes taken by Australian ballot have a much higher voter turnout than traditional town meeting.

(The exception to the rule noted above on budget questions and Australian ballot is for bond votes, which by statute must be taken by Australian ballot. 24 V.S.A. § 1758.)

B. SETTING THE TAX RATE

Depending on how it is voted on at town meeting, the total of all of the articles authorizing expenditure of money is the final town budget, or the final amount needed to be raised by taxes. When the final town budget is added to the school district and/or union school district's final budget, the grand total is that amount of money the town plans to spend for that fiscal year. Money to fund these proposed expenses comes from a number of sources, such as local taxes, state or federal highway and education funds, interest, fees, rental of town facilities, fines, sinking funds, enterprise funds, etc. When the total non-tax revenues is determined, that total is subtracted from the total proposed expenditures in order to arrive at the amount of money which must be raised by property taxes. (This may have been estimated already if the town voted at town meeting on an amount to be raised by taxes in lieu of a total town budget amount). For example:

Equation 1

Line A	Total anticipated expenditures	$1,596,477.00
Line B	Total anticipated non-tax revenue	823,991.00
Line C	Money to be raised through taxes	$772,486.00

Now set the tax rate based on the need to raise $772,486.00. (If a town votes specific amounts in lieu of a rate on a dollar of the grand list, the selectboard shall, after the grand list book has been computed and lodged in the office of the town clerk, set the tax rate necessary to raise the specific amounts voted. 17 V.S.A. § 2664.)

At present, local property taxes are the source of almost all tax dollars for municipalities. The grand list (see Section E below) is the total assessed value of the property in town. To arrive at a tax rate, divide the amount of tax revenue needed by the total grand list. For example, if the grand list is $331,594.00, then:

Equation 2

$772,486.00 ÷ $331,594.00 = $2.33. For the property owner, this calculates to $2.33 cents per $100.00 worth of assessed property value. For example, the owner of an $80,000.00 property will pay $1,864.00 in taxes.

Of course, tax rate calculation never comes out right on the exact penny value. A tax rate that is too low results in deficit spending and unhappy taxpayers who accuse their elected officials of fiscal irresponsibility. Likewise, a tax rate that is too high results in money left over and unhappy taxpayers who accuse their elected officials of over taxation. A close estimate is the best you can do or really be expected to do, but you should be prepared to justify and explain the proposed budget at the beginning of the year and the actual income and expenditures at the end of the year.

C. DUE DATE

The municipality may set the date or dates on which property tax payments are due. 32 V.S.A. § 4773. If the town sets a due date, the treasurer or tax collector "shall ... mail to each taxpayer ... a notice stating the amount of his or her grand list, the tax rate, the amount of taxes due, ... and when the same are payable." 32 V.S.A. §§ 4772, 4792. If no date is set by the voters or if the treasurer or tax collector does not mail the notice 30 days before the date set, then taxes are due 30 days from the date of mailing the notice to the taxpayer. 32 V.S.A. §§ 4772, 4792. (This eliminates the provision in Section 4792 which previously required the treasurer to "post notices in at least three public places and publish ... in the newspapers." It also grants the town the ability to, in effect, set a new tax due date 30 days from the date of mailing the tax bill. This is very helpful should the town or school budget repeatedly fail, which prevents the town from setting the tax rate and issuing tax bills in time to meet the date set by the voters.)

Municipalities may vote to collect taxes on a single date or in as many as four installments throughout the year. 32 V.S.A. §§ 4871-4872. The advantages to the town and to the taxpayer of installment payments are that cash flow is smoother and tax money is payable in smaller amounts at intervals rather than in one lump sum. The disadvantages are that the treasurer or tax collector has more bookkeeping and taxpayers have more deadlines to meet (or miss). In towns where the annual settlement with the auditors is on the first day of January (i.e. the town is on a calendar year and not a fiscal year) the final tax installment must be due on or before December 31.

When taxes are due in installments, the town may vote to charge interest on overdue payments. Interest may be "at a rate not to exceed one percent per month or fraction thereof for the first three months and thereafter one and one-half percent per month or fraction thereof, either from the due date of the last installment or from the due date of each installment." 32 V.S.A. § 4873. In addition to setting the interest rate, the town must decide whether to start charging interest as soon as *any* payment is overdue or to start charging interest only when the final payment for that year is overdue. A vote to charge interest remains in effect until rescinded by the voters at a properly warned meeting.

In order to encourage pre-payment of taxes, the town may vote a discount not to exceed four percent. 32 V.S.A. § 4773. This discount must be voted at the same meeting at which the tax is raised. Thus, when the town votes a budget or authorizes an expenditure at a meeting, it can, at that same meeting, vote to provide for the discount. Taxes may be prepaid "at any time after the municipality has so voted" and one or more installments may be paid in advance. 32 V.S.A. §§ 4774, 4872.

For a discussion of delinquent taxes, see Section K of this chapter.

D. RETIRING A DEFICIT

A deficit occurs when a town or school district has exceeded its budget – when it has simply spent more money than it had available. Vermont law requires that these deficits be resolved in a timely manner – at the latest by the issuance of the next annual tax bill.

There are several ways to retire a deficit. The method your town chooses will depend on a number of factors, including the amount of the deficit, the timing of its discovery and the overall

financial health of the town. First, the board may opt to convert the deficit to debt by issuing municipal bonds for an amount equaling the deficit. 24 V.S.A. § 1771. This bond acts by creating a replacement debt which will be paid off over a period of years. Second, the voters may vote a deficit liquidation tax to generate adequate funds. 24 V.S.A. § 1523. This tax most frequently shows up as a "deficit payment" line item in next year's budget. Third, if neither of those options has been taken, the selectboard "when making up the next annual tax bill, shall add thereto a tax ... as will provide sufficient revenue to liquidate such deficit." 24 V.S.A. § 1523. This appears as a mandatory deficit liquidation surcharge attached to the next year's tax rate.

E. THE GRAND LIST

The grand list is prepared by the listers and is a total of the assessed value "of all taxable real and personal estate taxable within the town...." 32 V.S.A. § 4151. Properties which are exempt from taxes are discussed in 32 V.S.A. Chapter 125 and include property owned by the state, disabled veterans and charitable organizations.

Questions frequently arise as to whether a particular property is tax exempt under the exemptions granted by 32 V.S.A. § 3802 to charitable, non-profit, educational or religious properties. There are many annotations under Section 3802, reflecting the number of cases that have progressed all the way to the Vermont Supreme Court. Since those cases are a tiny percentage of the actual controversies which arise and are settled at a lower level, this large number gives some idea as to the amount of confusion, controversy and high emotion which has arisen over the years on this subject. To further complicate the matter, 32 V.S.A. § 3832 lists a number of exceptions to the exemptions granted to "public, pious or charitable" uses. Again, there are numerous annotations that should be read for guidance on how to interpret Section 3832.

In addition to the general exemption statutes, many specific statutes deal with properties used for mining 32 V.S.A. § 3834, airports, farming, hotels, etc. A look in the index or just a perusal of Chapter 125 in Title 32 may be necessary in order to evaluate a particular situation in town. In some cases, exemptions are available only after the town has voted at town meeting to grant the exemption or to refuse it. Often these exemptions expire in a certain number of years, and must be voted on again by town meeting to continue in place.

The grand list can also be affected by municipal tax stabilization programs for farm and forest lands, open space land, industrial or commercial real and personal property and alternate-energy generating plants. 24 V.S.A. § 2741. Stabilization can be achieved by fixing the value of the property in the grand list, the rate of tax or the tax amount itself. Voters may delegate the authority to enter into the agreements wholly or partially to their legislative body or can retain the authority themselves. For more information about tax stabilization programs or for sample programs and agreements, contact the VLCT Municipal Assistance Center at (800) 649-7915.

Consolidated water and sewer district exemptions are covered in 24 V.S.A. §§ 3352 and 3683.

For more information about exempt and semi-exempt types of property, consult the *Vermont Listers Handbook*, available from the Vermont Department of Taxes, Division of Property Valuation and Review (802-828-5860).

The grand list must be completed and lodged with the town clerk by June 25 (subject to the extensions of time granted by 32 V.S.A. § 4341). Per 32 V.S.A. § 4152, the list must contain, in alphabetical order, the names of real and taxable personal property owners, their last known

mailing address, a brief description of taxable real estate parcels, the listed valuation of each owner's personal estate taxable in the town and a description of any mobile homes. How the valuation of real property is listed depends on whether or not it is subject to any one of a number of complicated property tax relief or exemption programs, the most notable of which is the state's Current Use Program for owners of farm and forest lands. See 32 V.S.A. § 4152 for more guidance on how the value of real property should appear on your grand list.

The statutes set out a schedule for the listers and board of civil authority to follow as they draw up the grand list, hold grievance hearings and consider appeals. As noted above, extensions of the dates that make up this calendar are set out in 32 V.S.A. §§ 4341 and 4342. The state Division of Property Valuation and Review's *Vermont Listers Handbook* mentioned above is a useful resource if you need more information about the development of the grand list in your town.

F. GRAND LIST CORRECTIONS

The general statutes concerning the correction of the grand list are in 32 V.S.A. Chapter 129, Subchapter 6. Omissions from the list made by mistake may be corrected by the listers, with the approval of the selectboard, any time prior to December 31. 32 V.S.A. § 4261. Procedural errors made by the listers may be corrected as prescribed in 32 V.S.A. §§ 4261-4265.

Property tax on construction equipment (as defined in 32 V.S.A. § 3603) is given special attention in 32 V.S.A. § 4151(d). If the listers become aware of such construction equipment in town after the grand list has been completed, they may correct the grand list by giving notice to the taxpayer and the town treasurer. If there is no timely appeal by the taxpayer, the treasurer shall then send an amended tax statement.

G. TAX ABATEMENT

Tax abatement is the decision by the town to reduce "in whole or in part taxes, interest and collection fees." 24 V.S.A. § 1535. Note that this is different from tax appeals (which are addressed in the following sections and in 32 V.S.A. Chapter 131) in that taxpayers come to the board of abatement not with a complaint about the assessment of their property but with a request to the town to reduce or eliminate their tax obligation.

Vermont statutes allow abatement when the taxpayer has died insolvent, has left the state or is unable to pay. Abatement may also be granted when there was "manifest error or a mistake" by the listers or where property has been lost or destroyed. 24 V.S.A. § 1535. In towns, the board of abatement consists of the board of civil authority, listers and town treasurer. 24 V.S.A. § 1533. In cities, it is made up of the mayor, city clerk, alderpersons, justices of the peace and assessors. 24 V.S.A. § 1537. In villages, it consists of the trustees, clerk, justices of the peace and listers. 24 V.S.A. § 1537.

Interestingly, the abatement statute does not state exactly how far back an applicant for tax abatement may go for relief. This is a decision to be made at the discretion of the board of abatement, and will depend upon the circumstances of the particular request. For instance, in the case of a person seeking abatement due to his or her inability to pay, the board should look for evidence of the event that triggered the new circumstances that could then give it a date from which to abate. In another case, an applicant might cite an error made years ago by the listers and

ask for an abatement of all subsequent overcharges. In such situations, it is best to be consistent, objective and fair when making decisions. A court will most likely uphold a decision based on facts and made in good faith.

Remember that abatement is not meant to replace the grievance process for property owners who are dissatisfied with the value placed on their property by the listers. (See Sections I, "Grievances," and J, "Tax Appeal Process," below.) Finally, municipalities that have charters should consult them to see if they contain any special provisions regarding abatement.

The quorum requirements for the number of abatement board members needed to take binding action are defined for towns in 24 V.S.A. § 1533. Meetings of the board must "be notified like meetings of the board of civil authority, except that at least one of the listers shall have personal notice...." 24 V.S.A. § 1534. (See 32 V.S.A. § 4404(b) for board of civil authority notice requirements.) Records of abatements must be made and filed with the tax collector and town treasurer. 24 V.S.A. § 1536.

H. BOARD OF CIVIL AUTHORITY

The board of civil authority is a municipal body charged with various duties related to elections and with hearing tax appeals. For tax appeal purposes and unless otherwise defined by charter, the town board of civil authority consists of the selectboard, town clerk and justices of the peace. The make-up of a city and village board is slightly different. 24 V.S.A. § 801. Section 801 also sets out a less stringent quorum requirement for the board of civil authority than is required for most town boards and commissions. It states "The act of a majority of the board *present* at a meeting shall be treated as the act of the board..." when hearing tax appeals (emphasis added). For information on the board's election-related functions, see 17 V.S.A. § 2103(5).

I. GRIEVANCES

Taxpayers who are unhappy with the town's appraisal of their property have a lengthy appeal process available to them. The first step is that listers "shall hear persons aggrieved by their appraisals or by any of their acts...." 32 V.S.A. § 4221. Grievances must be filed in writing and hearings must be completed by June 2. (See 32 V.S.A. § 4341-4342 for extensions of time.) At the time of hearing, the taxpayer may decline to appear at all, may appear personally or may be represented by an attorney or agent. Evidence may be oral testimony or by pertinent documents. The listers must then make a decision and notify the taxpayer of actions taken. 32 V.S.A. §§ 4222, 4223.

J. TAX APPEAL PROCESS

Taxpayers aggrieved by the final decision of the listers may appeal that decision to the board of civil authority within 14 days. 32 V.S.A. § 4404(a). Notice of such appeal may be given to the town clerk who shall then call a meeting of the board. Notice of the meeting shall be made by public notice in three or more places in town as well as by mail to each board member, the town agent, the chair of the board of listers and each appellant. 32 V.S.A. § 4404(b).

The basis for appeal to the board of civil authority is that the taxpayer disagrees with the appraisal value arrived at by the listers. The appraisal value for each property must be fair when considered with other comparable properties in town. The board must first find comparable

properties (in town if possible) for which a fair market value can be established. Then it must determine whether the property under appeal is being appraised and taxed fairly vis-à-vis the comparables. For example, if properties A and B each have a fair market value of $100,000 but property A is being taxed on an appraised value of $100,000 and property B is being taxed at an $80,000 value, such inequity is unfair and cannot be allowed.

The board must hold a meeting to hear testimony from the appellant property owners and the listers. A committee of not fewer than three members of the board then must inspect each property and report its findings to the full board which then gives a written decision with the reasons for the decision. The appellant must allow the inspection committee to inspect the property "including the interior and exterior of any structure on the property [or] the appeal shall be deemed withdrawn." 32 V.S.A. § 4404(c).

It is imperative that the board "substantially comply with the requirements of" 32 V.S.A. § 4404(c). If it does not, there are two possible outcomes, either one of which benefits the taxpayer.

If a taxpayer grieves his 2006 appraisal which is higher than 2005's because his property was reappraised, and if he can show that the board has not followed the mandates in Section 4404(c), his *grand list* (appraisal value) for 2006 will remain at the 2005 level and his taxes will be based on that value.

If a taxpayer grieves her 2006 appraisal which is higher than 2005's because there was a town-wide reappraisal and if she can show that the board has not followed the procedures in Section 4404(c), her *tax liability* for 2006 will be the same as it was for 2005.

Either way, the town loses some tax revenue, even if only for the one-year period. Notice that this is the result of 2006 changes to the statute and that it is retroactive to any grand list prepared on or after April 1, 1991.

The phrase "substantially comply with the requirements" of Section 4404(c) means that if the board of civil authority mishandles the appeal, the property owner wins the appeal. Keep in mind that the hearing before the board is a quasi-judicial one which must be properly conducted. (See Chapter 2, Section F(1)(h) of this handbook.)

The decision of the board is also subject to appeal by the taxpayer or the selectboard. 32 V.S.A. § 4461. Within 30 days of the mailing of the board of civil authority's decision, any one of these three parties may appeal to either the director of Property Valuation and Review or the Superior Court.

For more information on the tax appeal process, see *A Handbook on Property Tax Appeals*, published by the Vermont Secretary of State and the Division of Property Valuation and Review (2001), and available at: http://www.sec.state.vt.us/municipal/pubs/tax_jan_01.pdf.

K. DELINQUENT TAXES

Property taxes become delinquent as soon as the taxpayer fails to pay them on the final due date. Where taxes are due in installments, there is no actual delinquency until after the last installment's due date. However, the town may vote to charge interest on the late payment of any single installment. For example, if taxes are due August 15 and November 15 and the taxpayer

does not pay his or her August installment until October 15, the town may (if it has so voted) charge interest for that two-month period.

When taxes become delinquent, the treasurer then issues a warrant against the delinquent taxpayer to the collector of delinquent taxes. 32 V.S.A. §§ 4793, 4874. Note that when the delinquent tax warrants have been delivered to the collector of delinquent taxes, the town treasurer can no longer accept payment directly from the taxpayer. All payments must go first to the collector of delinquent taxes. *Rooney Vermont Associates v. Town of Pownal*, 140 Vt. 150 (1981). Collectors of delinquent taxes are entitled to an eight percent commission for collection of taxes, unless that amount has been changed by the voters, 32 V.S.A. § 1674, or unless the town has instead voted to pay him or her a salary, 24 V.S.A. § 1530. In this case, the eight percent will be deposited into the town's general fund.

For a more detailed treatment of this topic see the VLCT Municipal Assistance Center's *Handbook for Collectors of Delinquent Taxes*.

L. TAX SALES

There are several methods for forcing collection of overdue taxes: foreclosure, 32 V.S.A. § 5061, distraint, 32 V.S.A. § 5075, action at law, 32 V.S.A. § 5221, and tax sale, 32 V.S.A. § 5252. The most commonly used method is the tax sale.

Under 32 V.S.A. § 5252, the collector of delinquent taxes may extend a warrant on the property and proceed with tax sale preparations. Such preparation includes filing with the town clerk, advertising in a local newspaper, notifying the delinquent taxpayer (by registered mail), notifying any mortgage or lien holders of record or their agents or attorneys, and providing public notice within the town.

A 1996 change to the law allows the delinquent taxpayer to ask the town to sell a portion of his or her property equal in value to the amount of taxes due. 32 V.S.A. § 5254. However, if this is not possible – due to zoning regulations, for instance – it is the responsibility of the town to see that any excess money collected through the tax sale is ultimately returned to the taxpayer. For example, if Owner A owes $1,000 in back taxes and his property is sold at tax sale for $5,000, the town must pay the extra $4,000 (minus costs allowed under 32 V.S.A. § 5258) to Owner A.

A municipality *may* purchase property that is offered at tax sale. 32 V.S.A. § 5259. Note that this must be by act of the mayor or selectboard. Each property should be treated separately and consideration must be given to whether the property is a desirable one to purchase or is one that has attached liabilities such as harboring toxic wastes or other hazards. Purchase of the latter by the town is generally poorly advised and extremely expensive in the long run.

When property has been sold at tax sale, the delinquent taxpayer has one year in which to redeem the property by paying the town the amount for which the property was sold plus one percent interest per month. 32 V.S.A. § 5260. If the property is redeemed, the redemption money is paid to the party that purchased the land at tax sale and the original owner/delinquent taxpayer retains his or her original interest in the property. For more information on tax sales, see the above-mentioned *Handbook for Collectors of Delinquent Taxes*.

M. INVENTORY TAX AND BUSINESS PERSONAL PROPERTY TAX

Towns may vote to exempt inventory or business personal property from local taxation. 32 V.S.A. §§ 3848, 3849. If the town does not vote to exempt inventory, then it will be added to the grand list and taxed as outlined in 32 V.S.A. Chapter 129. Likewise, without a town vote to exempt, business personal property may be taxed under 32 V.S.A. § 3618.

"Inventory" is defined in 9A V.S.A. § 9-102(48). It includes such things as cars on a dealer's lot waiting to be sold or leased, the items for sale in your local grocery store or pharmacy, or materials that will be used up in the production of some end product.

The term "business personal property," defined in 32 V.S.A. § 3618(c)(1) means any tangible, depreciable, non-real estate property used in a commercial enterprise, such as books, furniture, tools, and machines. It does not include inventory, or items "so affixed to real property as to have become part thereof ...," or "poles, lines and fixtures which are taxable under Sections 3620 and 3659 [of Title 32]."

N. COUNTY TAXES

The assistant judges of each county are charged with the responsibilities of caring for county property and setting a county budget each year. 24 V.S.A. §§ 131, 133. Items which shall or may be included in the budget are listed in 24 V.S.A. § 133(e).

Notice of the final budget and the amount assessed to each town is not due until "on or before March 1." Therefore, the amount of county tax that must be allowed for in the proposed town budget must be a best estimate until almost Town Meeting Day. The county tax is due "on or before July 5." This tax is the source of some frustration to selectboards and local taxpayers because the town has no say in its formulation and cannot vote to not pay it. While the assistant judges are required each year to hold a hearing on the proposed budget, the input they receive has been determined by the courts to be non-binding.

The total county budget is divided up among the municipalities within the county on the basis of the "equalized grand list of such county." 24 V.S.A. § 133(f). The "whole amount [assessed] shall not exceed in one year five cents on a dollar of the equalized grand list of each county." 24 V.S.A. § 133(d).

O. SCHOOL DISTRICTS

The town collects taxes for itself and for the town school district. Within 20 days of the date on which the school's portion of taxes is collected, the treasurer must deposit the amount actually collected into the school's account, unless the selectboard and school board have agreed in writing to some other arrangement. However, if notification of the amount to be transferred to the school district by the commissioner of taxes has not been received within 20 days of the date taxes are due and payable, the transfer must be effected within 20 days of notification by the commissioner. 16 V.S.A. § 426(a).

This leaves any delinquent school taxes still to be dealt with. Sometime within 120 days after the taxes became delinquent (and no later than the end of the school year), the treasurer must pay to the school district "the balance of the sum of the gross school tax levy...." 16 V.S.A. § 426(b). This means that if the total school taxes are $100,000 and, even after collecting delinquent taxes,

only $95,000 has been collected, the town treasurer still must transfer that extra $5,000 to make up “the balance of the sum.”

Such a law may strike the selectboard as rather draconian, as it searches for a way to fill the $5,000 hole in the town’s funds. However, the law seems quite clear and unforgiving.

In the case of union school districts, the town also collects the school taxes and, unless otherwise agreed, must pay them to the union district as specified in 16 V.S.A. § 711b. Amounts derived from taxes must be paid within 20 days of the day they were due. Amounts derived from state aid must be passed on within 20 days of the day each installment was received by the town. 16 V.S.A. § 711b. Overdue payments are subject to penalties and interest as set out in 16 V.S.A. 711b(d).

CHAPTER 16
FINANCES

A. SIGNING ORDERS

The selectboard has the authority to draw or issue orders that instruct the treasurer to pay the town's bills. The treasurer has no independent authority to disburse money without a signed order. 24 V.S.A. §§ 1621, 1576. As with any other action or decision, the selectpersons must act as a board. This means that no single member may authorize payment and that the board (or a quorum of the board) must meet and concur on a decision to draw the order. 1 V.S.A. § 172. In some towns, it is common practice for selectboard members to stop at the town office individually and each sign an order without discussion or with other members. This is not proper, since there has been no concurrence of a majority of the board.

If meeting to consider and vote on all orders proves too onerous for a selectboard, there is an exception to the general rule discussed above. The selectboard may instead authorize one or more members of the board to allow claims and to draw orders. Note that this is an act of the board – the delegation of authority to a member or members. 24 V.S.A. § 1623. This authority to delegate is useful in towns where the board meets infrequently and there is a need to pay certain bills (such as paychecks) in between regular meetings. It is also useful in the case of a one-time purchase or contract that has been approved by the entire board, but certain paperwork needs to be done outside of the meeting. This authority should be used sparingly and the orders "shall state definitely the purpose for which they are drawn." Notice to the treasurer that an individual board member has been authorized to sign for the board must be in the form of a certified copy of those relevant portions of the selectboard minutes where the authority was granted.

The authority to sign orders for town obligations vests broad power in the selectboard. Whereas other officials may have the authority to perform certain acts, if it is going to cost money, in most cases they have to convince the selectboard to pay for those acts. Some common examples are when the zoning administrator needs money to enforce a zoning violation, or when the listers hire assistance to help defend an appraisal.

B. RESERVE FUNDS AND SINKING FUNDS

A reserve fund is one which is established by the voters for a special purpose and which may be carried over from year to year. For example, the town would like to make improvements to the recreation field which will cost about $30,000. There is a comprehensive plan for the improvements, which will have to be done incrementally over several years. The voters may appropriate the entire amount now for that specific purpose. That money must be put into a special, dedicated account, which will be administered by the selectboard solely for the recreation field.

A second example is the commonly used "equipment fund," by which voters approve money to be put aside for big ticket items such as dump trucks or graders. The money set aside each year can be invested and accumulate so that the eventual purchase of a $150,000 item can be accomplished without borrowing and paying interest on the whole amount.

The board should act in a fiscally responsible manner and assure that all money is invested wisely until such time as it is actually needed. The voters, not the selectboard, have the authority

to spend money from the reserve fund for purposes other than the original purpose if they so vote at an annual or special meeting. 24 V.S.A. § 2804.

A sinking fund differs from a reserve fund in that it is money appropriated strictly for the retirement of a bond or other debt. 24 V.S.A. § 1777. In other words, the money is allocated for money already spent. Money in a sinking fund must be used for the intended purpose and may not be used for current operating expenses..

C. CAPITAL BUDGETING

A capital budget is a planning tool. It may be developed by the selectboard alone or with help from the planning commission.

- The legislative body may adopt, amend or repeal a capital budget after notice and public hearing, if a town plan is in place. 24 V.S.A. § 4443.
- A planning commission may prepare and present a recommended annual capital budget for action by the legislative body. 24 V.S.A. § 4430.

A *capital budget* is a list of capital projects for the year, along with their estimated costs and proposed method of financing. A *capital program* is the same information projected over a five-year period. A *capital project* may include physical improvements (or the machinery, apparatus or equipment needed to make physical improvements), preliminary studies and surveys, land rights or any combination of the above. 24 V.S.A. § 4430. For example, to build a water treatment plant, a town might need to conduct surveys and soil tests, purchase land, do blasting and excavation, install a temporary drainage system during construction, and purchase and install tanks, filters and pumps. Each of those things and all of them in combination would be necessary components of the capital project.

The capital budget or program must be prioritized and specify:

- the project and estimated cost;
- the proposed method of financing;
- anticipated state or federal funding;
- impact fees, if any;
- proposed amount and type of bonding and the period of probable usefulness; and
- the estimated effect upon operating expenses of the town. 24 V.S.A. § 4430.

There are several reasons to develop a capital budget and plan. First, it forces the board to set priorities and to plan ahead. This can help to smooth out those bumps in the budget where two or more major expenses occur in a single year, causing a sudden rise in the tax rate. Planning ahead, in the form of timing these expenses for different years or setting up a reserve fund in anticipation of certain expenses, will eliminate some of those bumps. Second, a capital budget adopted under 24 V.S.A. Chapter 117 must be in place in order to levy impact fees on development within the town. 24 V.S.A. § 5203(a)(1). For more information on impact fees, see Section F in this chapter.

D. PUBLIC FUNDS AND PUBLIC MONEY

1. **Trustees of Public Funds.** Trustees of public funds must be elected from among the legal voters at the annual meeting if the town so directs. 17 V.S.A. § 2646(12). The duty of the three trustees is to manage real or personal property held by the town in trust for any purpose. 24 V.S.A. § 2431. This includes trust funds to be used, for example, for charitable, educational and cemetery purposes but excludes "United States public money." (See **Trustees of Public Money** below.) There is some overlap of responsibility for cemetery funds among trustees, cemetery commissioners and town treasurers. It appears that if trustees of public funds are elected, they have primary responsibility for the investment of funds and for the annual reporting on them.

   The trustees have the duty and authority to manage public funds, including the authority to:

- apply the income to its designated purpose;
- create deeds and contracts;
- lease, sell or convey real estate and invest the proceeds;
- lend money and hold deeds and mortgages;
- invest in certain bonds and shares; and
- hold, purchase, sell, assign, transfer and dispose of securities and investments and the proceeds of investments. 18 V.S.A. § 5384(b); 24 V.S.A. § 2432.

   In some investments the trustees are subject to certain federal and state banking and insurance guidelines.

   Each year, the trustees must report to the town or, in the case of school money, to the state board of education the results of their handling of investments and the use of the income from public funds. 24 V.S.A. § 2434. Trustees must be bonded to the satisfaction of the selectboard. Finally, they may prosecute and defend in legal actions involving public funds. 24 V.S.A. § 2433.

2. **Trustees of Public Money.** Towns which "retain possession of a portion of the surplus funds of the United States received under the Act of 1836" must elect a trustee of public money. 17 V.S.A. § 2646(13). This trustee is not the same as the trustee of public funds discussed above.

   In 1836, Congress passed a statute that deposited most of the excess money left in the U.S. Treasury with the states. The law reserved $5 million for the U.S. and divided the rest of the funds among the states in proportion to their representation in Congress. *U.S. Statutes at Large*, 5:55, June 23, 1836. To accept the money, the states had to pledge to keep the money safe and to repay it "from time to time, whenever the same shall be required ... for the purpose of defraying any wants of the public treasury, beyond the amount of the five millions aforesaid…." *Id.*

   States were free to refuse these surplus funds, but it appears that Vermont accepted, because the State Legislature provided for distribution of these public moneys to towns that had appointed or elected trustees to manage the money. Trustees were charged with reporting to the town at the annual meeting.

Whether any towns still have any of this federal surplus money is questionable. However, it is certainly historically interesting, if not absolutely fascinating, that the U.S. government actually had surplus funds in 1836-37 and that it felt it could distribute them to the states, keeping only a $5 million buffer against future expenses. If there is still surplus money out there, keep in mind that the U.S. Secretary of the Treasury probably still has the authority to call for it in amounts not to exceed $10,000 from any one state, in any one month.

E. REVENUE SOURCES

Until the passage of Act 60 (the Equal Education Opportunity Act) in 1997, towns appraised properties, passed their budgets, set the tax rate and collected taxes on real and personal property sufficient to pay most town and school expenses. With the passage of Act 60, the property tax system became somewhat fragmented, especially with regard to school taxes. The state now collects and administers some property taxes which are then redistributed to school districts in a manner designed to equalize school property tax rates and to provide more equal financing for the various school districts. Nevertheless, the local property tax remains the backbone of municipal finances. (See Chapter 15 for more detail on budgets and taxes.)

Some municipal charters provide authority to impose local option taxes. In addition, 24 V.S.A. § 138 gives authority for certain municipalities to impose local option taxes. These taxes may be imposed on rooms, meals, alcohol and telecommunications.

In addition to taxes, municipalities may realize revenues from such sources as:

- fines and penalties collected from ordinance violations, traffic and parking tickets, and zoning violations;
- impact fees on new development;
- special assessments for such things as water and sewer expansion;
- application and permit fees for planning, zoning, or on-site septic;
- user fees or rental income for use of recreational facilities or meeting rooms;
- utility fees for water, sewer, electricity;
- fees for filing and recording in the town records; and
- interest on investments and trust funds.

Municipal cemeteries may have trust funds that generate money. They will also have some income from the sale of burial lots. Trust fund income must usually be used solely for the purpose designated by the trust. The exact terms of each trust should be consulted. There may be other gifts or bequests that occur incidentally or from which ongoing income may by derived.

By statute, a certain percentage of the income from property tax transfers is to be returned to the towns for planning purposes. 24 V.S.A. § 4306(a).

Borrowing is a source of capital for special projects. See Chapter 17 for more detail on bonding generally.

In disaster situations such as flooding, federal and state emergency funds may be available. Contact the Federal Emergency Management Agency at (617) 956-7506, or Vermont Emergency Management at (802) 244-8721.

The state Agency of Transportation (VTrans) provides financial assistance to towns on a per-mile basis of highway. It also provides grants for paving, bridges and culverts, and pavement markings (yellow lines) on some town highways upon request. Note that money from VTrans is available only if the town complies with the requirements of 19 V.S.A. Chapter 3.

Several revolving loan funds are available to help municipalities with water quality and solid waste control projects. They are:

- pollution control revolving fund for sewage systems and sewage disposal plants;
- drinking water state revolving fund for planning, designing, constructing, repairing or improving water systems;
- solid waste revolving fund for planning and constructing solid waste handling and disposal systems;
- drinking water planning fund for loans to municipalities with populations of less than 10,000 for feasibility studies and preliminary plans and designs for public water systems; and
- drinking water source protection fund to help municipalities purchase land or easements to protect water sources. 24 V.S.A. Chapter 120.

From time to time there are other revolving loan funds and grants from various agencies to help with specific projects.

F. IMPACT FEES

An impact fee is a special fee imposed as a condition for issuance of a zoning or subdivision permit to cover a portion of the cost of a capital project which will benefit or is attributable to the applicant or to compensate the municipality for construction expenses. For example, when a subdivision permit is issued and the new subdivision will necessitate an extension of water and sewer services, some of the cost of that extension may be imposed as an impact fee, to be paid by the applicant.

Municipalities may impose impact fees in accordance with 24 V.S.A. Chapter 131. Such an impact fee may be levied if the municipality has:

- an approved town plan;
- a capital budget and program pursuant to 24 V.S.A. Chapter 117; and
- developed a reasonable formula to assess impact fees. 24 V.S.A. § 5203.

There are a number of factors provided in the statute for calculating the amount of the impact fee to be imposed.

The municipality must spend the impact fee on the capital project for which it was intended within six years of payment. If it does not, the payer of the fee is entitled to a refund. 24 V.S.A. § 5203(e).

A municipality must establish a formula for calculating the impact fee and a procedure for levying it by ordinance adopted under 24 V.S.A. Chapter 59 or by bylaw under 24 V.S.A. Chapter 117.

In lieu of an impact fee, the municipality may accept off-site mitigation. Either condition may be required before issuance of the permit. 24 V.S.A. § 5204. Certain types of development may be

exempted from impact fees, if the exemption will accomplish other policies or objectives of the municipality. 24 V.S.A. § 5205.

G. CALENDAR YEAR VERSUS FISCAL YEAR BUDGETING

1. The Pros and Cons of a Fiscal versus Calendar Year. Vermont law mandates that school districts operate on a fiscal year of July 1 through June 30, but allows municipalities to operate on a calendar or fiscal year. 24 V.S.A. § 1683. According to VLCT's most recent data, between one third and one half of Vermont municipalities have moved to a July 1 to June 30 fiscal year. Following are some of the advantages and disadvantages of making the switch.

Reasons to maintain the status quo of a calendar year:

1. Inertia, or, "this is the way we have always done it."
2. The transition period will require more work.
3. Depending on how the transition is made, there could be a nine-month gap between the end of the fiscal year and the next town meeting. This may make officials seem less accountable and will make it difficult for voters to discuss expenditures made as long as 21 months before the meeting and plan expenditures up to 16 months in the future.
4. It will complicate payroll records and income tax reporting that are required to be done by calendar year.

Reasons to switch to a fiscal year:

1. The school and town will be on the same time schedule so the budgets will be concurrent.
2. The voters get to approve the budget in March for the tax year that starts in July. Therefore, no operating expenses are incurred before budget approval. This is in contrast to the calendar year basis where the town operates from January 1 until town meeting with no budget in place.
3. Tax collection may start soon after the beginning of the fiscal year, thus eliminating the need to borrow money for operating expenses.
4. Auditors will have more time to do their job as they can audit the books in July and August and prepare the town report by December or January.
5. Winter highway maintenance costs are in a single year budget cycle.
6. The town's fiscal year will coincide with the state's fiscal year for highway and other funding, such as Act 60.
7. There is room to schedule the annual budget vote for May or June by which time the grand list will have been completed and the Legislature will have adjourned (probably) so that more information will be available about state funding and statutory changes.
8. If surrounding municipalities are on a fiscal year, intermunicipal agreements with them would be easier.

2. **How to Change.** State statute governs the way (Australian ballot or not) your municipality votes on the question of changing its fiscal year. If your town votes to decide this particular question by Australian ballot or if it has already voted to decide all public questions by that method, then the vote must be by Australian ballot.

   Although there is no specific statute, it is reasonable to conclude from similar voting situations that the town must vote on whether or not to switch over to a fiscal year at one meeting and then vote on the actual budget at a subsequent meeting.

   While towns making the move to a fiscal year can adopt a transitional six-month budget for the period January 1 to June 30, experience has shown that the adoption of a single, transitional 18-month budget is probably the more expeditious way to make the change. While this method may appear difficult because 18 months of tax money is lumped into one budget, spreading the payments out into quarterly payments will make the actual paying of taxes less painful.

   If you have questions about changing your municipality's fiscal year, please contact the VLCT Municipal Assistance Center. The Center can assist you with your questions and put you in contact with other municipalities that have recently changed, so that you may hear first hand about the process.

H. HIGHWAY FUNDS

The selectboard has broad authority to spend money for highways and highway equipment. This authority derives from 19 V.S.A. § 304, which mandates certain duties and responsibilities regarding care of highways, and from 19 V.S.A. § 310, which sets the standard for highway maintenance. Funds appropriated by the town for highways *may not be used for other purposes.* 19 V.S.A. § 312.

A common problem is an unforeseen need to buy an expensive piece of highway equipment when no money has been appropriated for that purpose. There are several ways to handle this. One solution is to call a special meeting and ask the voters to authorize a short- or long-term loan to fund the purchase. Another is to enter into a lease-purchase agreement. Typically such agreements run for three or four years. This necessitates a vote each year of the agreement to authorize that amount of money needed to pay that year's installment. Finally, the board has the authority, under its broad mandate to maintain highways, to purchase the item and make up the deficit by asking the voters to approve a special tax or by levying a tax on the next year's grand list to "provide sufficient revenue to liquidate such deficit." 24 V.S.A. § 1523.

I. GRANTS, GIFTS AND BEQUESTS

Each grant, gift or bequest is different and must be read carefully so that all of the conditions and requirements are understood and the town is sure that it can meet them. Grants are frequently available from state and federal government sources for highways, historic preservation and planning. These grants can come with extensive recordkeeping, audit and other reporting requirements that may make them ultimately unworkable for a town.

For conservation purposes, municipalities "may acquire ... real property or any right and interest therein by purchase with any authorized funds, or by donation, devise, exchange or transfer…" under 10 V.S.A. Chapter 155. Property interests may also be acquired by the state under this

chapter. In either case, there may be property tax implications in the form of tax exemption or payments in lieu of taxes (PILOT).

Grants, gifts and bequests may be available from private or charitable sources from time to time. Again, these must be evaluated individually to be sure that the municipality can comply with any conditions inherent in them. There may be constitutional issues, state statutes or long-term financial considerations that must be weighed before accepting grants, gifts or bequests. There may also be political repercussions, especially where property is acquired by gift or bequest, but over the long term there will be loss of tax income or a cost to the town to maintain the property through tax dollars. In some situations, it would be wise for the selectboard to have an advisory or a binding public vote before accepting an apparent "freebie."

See also Chapter 18, Community Development, for contact information on the federal/state Community Development Block Grant Program.

J. PURCHASING POLICIES AND PURCHASE ORDERS

1. **Purchasing Policy.** There is no requirement that towns purchase through a bid process. This is in contrast to state government and school districts, which are required to follow a bid process. The selectboard may adopt a purchasing policy. In a large municipality, such a policy is advisable because of the complexity of government and the need for a standard procedure. In a small municipality, such a policy is advisable because of the need to provide a fair and consistent system in cases where local suppliers or contractors are also municipal officers or are related to municipal officers. The temptation to automatically award municipal contracts to yourself or to a relative may lead to real or perceived conflicts of interest and favoritism. A clearly stated policy and procedure for purchasing goods or services will help to prevent such conflicts.

   Factors that should be addressed in a purchasing policy include:

   - conflict of interest;
   - how to advertise or notice requests for bid or proposals (posting, publishing);
   - what is exempt from bid system (e.g. legal services, insurance, or purchases less than a certain dollar amount);
   - when can the board waive the bid process (e.g. emergencies, sole supplier available);
   - what, if any, preference for local suppliers;
   - what, if any, preference based on prior experience with the bidder;
   - clear specifications for the service or product to be bid;
   - provision of insurance or performance bond required;
   - provision of warranty required;
   - gifts, rebates and gratuities for town employees and officers are not allowed;
   - regular, recurring purchases and charge accounts; and
   - bidding procedure with time and place parameters.

   The VLCT Municipal Assistance Center has a number of sample purchasing policies on file and will supply copies on request. See the Appendices for a model purchasing and bidding policy.

2. **Purchase Order System.** Some Vermont municipalities use an "encumbrance" or purchase order system in conjunction with their normal purchasing and accounting procedures. Most of the financial management software applications that are specifically designed for municipalities will offer a purchase order feature. Purchase orders can be extremely useful for elected officials and municipal administrators for many reasons, such as:

   - the purchase order represents a financial obligation on behalf of the community;
   - a purchase order may be required by some vendors;
   - use of a purchase order assures that purchases have been reviewed and approved by appropriate authorities before a financial obligation is made;
   - purchase orders, used with an encumbrance system, will enable municipal officials to determine the current status of budgeted expenditures, even before invoices are actually received or paid for outstanding purchases. Accounting reports can be set up to display (1) total budget, (2) total expenditures to date, (3) total encumbered (orders made but goods or invoice not received), and (4) remaining unencumbered balance; and
   - purchase orders confirm, in a written format, the cost, quantity, specifications and delivery location for goods and services.

   Purchase orders can be a useful tool to help officials maintain a good handle on planned and actual expenditures as they relate to the authorized municipal budget.

K. INVESTMENTS

"Moneys received by the town treasurer on behalf of the town may be invested and reinvested by the treasurer with the approval of the legislative body." 24 V.S.A. § 1571(b). What criteria or guidelines apply when making decisions about investments?

The first factor is to determine the type of funds being invested. Depending on the source of town funds being invested, there may be statutory standards that must be adhered to. For instance, certain federal grants must be deposited in federally insured accounts. Specific state statutes control the deposit and investment of cemetery funds. The proceeds of municipal bonds and notes must be deposited and invested in conformance with detailed federal regulations. The donor of monetary gifts and bequests to the town may have imposed investment restrictions in the document conveying the funds to the town. So-called "public funds," that is, money held by a town in trust, are under the control of elected or appointed trustees. Investment powers and restrictions relating to public funds are set out in 24 V.S.A. § 2432. The point is that the source of the funds being invested may determine the range of available investment vehicles.

The next line of inquiry is the purpose for which the funds are being invested. An escrow account to ensure compliance with zoning permit conditions or conditional use approval will be subject to the controlling concern that there be sufficient dollars on hand to complete the infrastructure improvements if the town has to resort to the fund upon default of the developer. The same can be said of impact fees and sewer system reserve funds. What characterizes these accounts is the reliance of third parties (not necessarily the town or its inhabitants) upon the availability of dollars earmarked for a specific purpose.

There is little guidance in the statutes on the investment of unrestricted general funds. Vermont does not have a public funds investment statute. The subject is controlled by the common law that treats the treasurer and selectpersons as fiduciaries in managing, controlling, investing, and

expending public funds. Being fiduciaries, they are held to a higher standard of care than they would be if managing their personal funds. The test is not "what I would do if investing my own money?" Instead, it is "have I thoroughly examined the potential of return, risk of loss and degree of liquidity to satisfy myself that this particular investment is safe?" Remember that rate of return is not the controlling factor. Although it might be tempting to push the envelope in order to squeeze a higher yield out of an investment or deposit, that sort of motivation is an invitation to disaster. Prudence is the pole star in this area. Would I prefer to sleep soundly in exchange for giving up a one-tenth-of-a-percent increase in investment yield? You bet I would!

In assessing the risk inherent in any investment there are myriad considerations that you should ask of your banker, attorney, accountant and other financial professionals. Availability of deposit insurance, deposit collateralization, direct or indirect state or federal governmental guarantees, track record of the investment sponsor, Vermont domicile or registration and financial status of the financial institution are only a few of the factors the treasurer and selectboard should look at before even thinking about rate of investment return. The goal is to be supremely confident that the town's funds will be available when needed without loss or delay.

The Federal Deposit Insurance Corporation (FDIC) is an independent agency of the United States government that provides up to $100,000 insurance per account for certain types of accounts in many banks and savings associations. When a municipality has more than $100,000 to invest, it should be sure to place such money in insured accounts and in different accounts or financial institutions in order to be fully covered by the FDIC. (For more information, contact your bank or the regional office of the FDIC at 200 Lowder Brook Drive, Suite 3100, Westwood, MA 02090.)

L. CLAIMS AGAINST THE TOWN

When a person allegedly suffers a loss or injury because of an action by a municipality or one of its officials, a suit against the municipality may result. Under 24 V.S.A. § 901, when an action involves "any appointed or elected municipal officer or town school district officer," the action must be brought against the town or school district rather than the individual. The municipality must then assume all reasonable legal fees incurred where "the officer was acting in the performance of his duties and did not act with any malicious intent."

In contrast to towns, when the official is "a duly appointed public or peace officer of the village," he or she *may* be indemnified and "the trustees *may* defend such action" at the village's expense. 24 V.S.A. § 1313 (emphasis added). The Vermont Supreme Court has further ruled that where an individual is both "a municipal officer" under § 901 and "a duly appointed public officer" of a village under § 1313, then only § 1313 applies and the village *may* indemnify or defend but is not required to do so. *Holmberg v. Brent*, 161 Vt. 1153 (1993).

To further confuse this matter, governmental bodies may be held to be immune from suit under the doctrine of sovereign immunity. This in turn depends on what type of action the town official or employee was performing at the time damage or injury occurred. Furthermore, the court has held that sovereign immunity is waived to the extent that the municipality is insured. (For example, if the town is insured for $1 million and damages are $1½ million, the town may be held to have waived its immunity up to the insured amount.)

Because cases in this area tend to be complex and quite fact-specific, the best advice we can give is to consult your town attorney or an attorney with special expertise in this area if such a problem arises.

M. BUDGET DEFICIT OR SURPLUS; CASH FLOW

1. **Deficit.** Vermont statutes clearly define ways to deal with a budget deficit at the end of the year. (See Chapter 15, Section D.)

2. **Surplus.** A frequent question is what to do with a surplus in the budget. First of all, it depends where the surplus is. Reserve funds, trust funds and other special funds may be carried over into the next year. Such funds consist of local tax dollars set aside by the voters for a specific use or non-tax dollars borrowed, granted or given for a specific use. These funds must be kept for that use indefinitely or for a specific period of time (for example, a six-year limit on impact fees).

   The law on the subject of other carry-over, or leftover, funds is not so clear. Perhaps the best discussion of the subject was written by former Deputy Secretary of State Paul Gillies, who said in his 1992 *Book of Opinions*:

   > Assuming that there are no charter provisions on the subject, then we believe the best answer [regarding use of surplus funds] is provided by 17 V.S.A. § 2664, which gives the electorate the authority to appropriate specific amounts for specific purposes. This would restrict the municipality's use of specifically appropriated sums to their original purposes and would authorize the voters to appropriate surplus or unused funds for other purposes, assuming the articles making these appropriations are specific and properly warned.
>
> Sums voted at an annual or special meeting need to be spent during the fiscal year. At any time the electorate may revisit the budget at a duly warned meeting of the town and reallocate it. Only when funds are appropriated for highway projects or for [reserve] funds will they carry over from year to year, and even then the voters are free to change their minds on how money should be spent.
>
> What about an unencumbered balance in the tens of thousands of dollars being used to decrease the amount necessary to be appropriated at the annual meeting? Can an unexpended balance be carried over into the next fiscal year for the discretionary use of the selectmen? We wish the law were clearer (a familiar refrain). The key is the wishes of the electorate. The safest policy is to stick to the basic principle that only voters can approve appropriations. A surplus does not automatically revert to lower taxes. It depends on the warned article and the voted article. The surplus can be carried forward, or it could be reappropriated by the electorate to lower taxes for the coming fiscal year. It all depends on how careful the electorate is in wording an amendment to the general fund appropriation.

3. **Cash Flow.** The question frequently arises as to when and if the selectboard can move money around within the budget. The statutes and the case law never clearly address this dilemma. Seventeen V.S.A. § 2664 says "A town shall vote such sums of money as it deems necessary... ." Does that mean that the line item amounts are cast in stone?

For example, there is a need for numerous new culverts after a flood, or there is serious fire damage to a town building. Can the selectboard take money from the recreation department funds to pay for culverts or uninsured fire damage? The answer is probably somewhere between common sense and the law. The selectboard is mandated to see that the town operates in the best interest of the people. It is also specifically charged with maintaining the highways to a certain standard. Therefore, when something unforeseen (and expensive) happens, the board must act on behalf of the town and in its best interests. This may mean moving money between accounts where feasible. It also may mean just spending the extra money and ending the year with a deficit that must be paid off in one of the ways designated under 24 V.S.A. §1523. Common sense and political savvy may mean calling a special meeting to ask for a vote or just to provide an opportunity to inform the voters and to get feedback from them.

In the case of minor juggling of funds from one line item to another, the board must have the authority and discretion to act in the best interests of the town by using its judgment and applying the tax dollars where they are most needed. For example, if special elections must be held and the budget has insufficient funds to pay the ballot clerks, money may be moved from other line items to cover the necessary costs.

The selectboard may borrow money for current expenses in anticipation of taxes. If, at the beginning of the budget year, there is simply not enough money in the bank to pay bills, the board may borrow the necessary money, planning to repay it when tax dollars are received. Such debts must be paid off within the year. 24 V.S.A. § 1786.

There is also a statute that authorizes short-term, interest-free loans between the town and the school district. 16 V.S.A. § 429. In a situation where such loans would overall be advantageous to the taxpayers, this may provide a good solution to a temporary money crunch.

CHAPTER 17
MUNICIPAL BORROWING

From time to time, almost every municipality finds that it must borrow funds for a municipal construction project or large purchase (most often a school, sewer system, water works or a fire truck) rather than finance the project or purchase from its annual tax revenue. Statutes granting a municipality the ability to borrow money and incur debt are found in 24 V.S.A., Chapter 53. While many town and village charters also address the subject, virtually every exercise of debt-issuance authority brings the municipality back to Chapter 53 and the procedures, standards and limitations set out therein. Even when a municipality relies upon specific statutes relating to the financing of particular governmental projects (e.g., water and sewer systems), invariably Chapter 53 becomes an integral part of the process.

Regardless of the purpose for which debt is to be issued, it is critical that all applicable statutory provisions be adhered to. While there is a validating mechanism (24 V.S.A. § 1757) for those situations in which there exist relatively minor technical deficiencies in the bond election process, not all procedural defects can be corrected in this way. For that reason, we strongly recommend that local officials take the time at the outset of any contemplated capital improvement financing to review the statutes and familiarize themselves with the process.

A. SUBMITTING THE PROPOSITION

The process begins with the legislative body adopting what is known as a necessity resolution. This document establishes the public benefit of the particular improvement and directs the selectboard to submit a proposition to incur bonded indebtedness to the voters for their approval. At the same time, a warning for an annual or special meeting is approved, one that contains language that tracks the statutory form of an article for incurring bonded indebtedness. 24 V.S.A. § 1758. It is important to remember that the posting and publication requirements for a bond election warning, 24 V.S.A. § 1756, vary substantially from those relating to annual and special meetings generally. 17 V.S.A. § 2641. Also, there must be at least one public informational hearing in the ten-day period immediately preceding the date of the bond election. This hearing may be held at the same time as a regular or special meeting of the legislative body. 17 V.S.A. § 2680(g).

The vote on the proposition of incurring bonded indebtedness is conducted by Australian ballot. 24 V.S.A. § 1758(a). The general laws applying to Australian ballot elections, dealing with absentee ballots, checklist revision, meeting conduct, etc. apply. Ballots should be preserved for at least six months. As with other votes, there is a 30-day rescission and reconsideration period. Blank and spoiled ballots are not counted.

B. INTERIM FINANCING

Once the proposition of incurring bonded indebtedness has been approved, the selectboard may proceed with construction of the authorized improvements and arrange for temporary financing pending sale of the municipality's bonds. Temporary construction financing has two components, namely bond anticipation notes and grant anticipation notes. Each form of temporary indebtedness is controlled by specific state and federal laws. However, as a general

proposition, both types of notes have one-year maturities, but may be renewed until bonds are sold and grants-in-aid are received.

Assuming there is compliance with Section 148 of the Internal Revenue Code of 1986, note proceeds can be invested until needed, with interest earnings thereon being available to assist the municipality in financing the authorized improvements.

C. ALTERNATIVE DEBT FINANCING

For relatively low-cost capital improvements, or for capital items having a short depreciable life, it may be desirable to finance the same through capital improvement notes rather than traditional bonds. The process is set out in 24 V.S.A. § 1786a(b). For capital improvement debt that will be repaid in less than five years, authorization is obtained from the voters in the same manner as any other warned article is approved. This may take the form of voice vote, paper ballot or Australian ballot if the municipality has elected to use that option. For improvements to be financed over a term of more than five years, the traditional bond authorization process, 24 V.S.A. § 1756, must be followed, even though the ultimate form of debt will not be a bond. 24 V.S.A. § 1786a(c).

D. REFINANCING

The legislative body, on its own motion, has the authority to refinance outstanding debt and/or operating deficits that take the form of current expense notes. Often it is advantageous to issue new bonds when interest rates decline, but this is not always the case. Redemption premiums and transactional costs could erode potential debt service savings. The services of an independent financial advisor are indispensable if your municipality is considering refinancing all or part of its debt.

Refunding bonds or notes is generally used as a means of liquidating a municipality's deficit. Under 24 V.S.A. § 1523, once a deficit is recognized at the close of the fiscal year, the municipality must arrange for its liquidation. Depending on the size of the deficit, it is either included in next year's budget, or it is converted to debt and paid off over a number of years. With some notable exceptions, most deficit liquidation takes the form of a one-year current expense note that is renewed annually over a term of years in accordance with a schedule approved in advance by the legislative body. Only in extreme cases are long-term bonds employed as a means of deficit liquidation.

For end of the year school district deficits, see 24 V.S.A. § 1523(b).

E. DEBT CHARACTERISTICS

As a general proposition, municipal bonds are payable over a maximum term of 20 years in equal or diminishing amounts of principal due annually, interest due semi-annually. However, certain types of bonds (e.g., water and sewer system improvements) can be structured for longer terms and with level debt service that has the same characteristics of a home mortgage. Normally, any type of utility bond is structured to achieve level debt service over its term. For more specific information on water and sewer debt see 24 V.S.A. Chapters 89, 97 and 101.

F. DISPOSITION OF PROCEEDS

Keep in mind that the Internal Revenue Code of 1986, and specifically Sections 141 and 148, has a direct impact on whether the municipality's bonds and notes will enjoy favorable tax treatment in the eyes of investors and banks. There are certain use restrictions and expenditure/investment requirements that must be adhered to in order to avoid having the bonds or notes classified as "private activity bonds." In most instances, especially those involving municipal bond financing of construction projects, compliance with the applicable code provisions is not a problem. However, any departure from a normal "plain vanilla" municipal financing probably warrants some professional advice.

G. BOND ISSUANCE

By far, the most user-friendly means at the municipality's disposal for permanent financing of its capital improvements is the Vermont Municipal Bond Bank. There are some instances, however, where the size or complexity of the project or the project financing warrants a step up to a bond sale, on a competitive bid basis. In such a situation, the services of a competent financial advisor or underwriter are indispensable. For more information about the Bond Bank, visit http://vtbondagency.org/index.html.

In addition to the Bond Bank, some types of infrastructure improvement bonds are eligible for purchase through programs administered by the U.S. Department of Agriculture's Farmers Home Administration, Community and Business Programs, located at 89 Main Street, Montpelier, VT 05602 (802-828-6030). Also available is the State Revolving Loan Fund administered by the Agency of Natural Resources. For more information about the State's programs, contact the Agency's Department of Environmental Conservation at 103 South Main Street, 1 South, Waterbury, VT 05671 (802-241-3800). Generally, both the federal and state programs offer financing of water and sewer system improvements.

*(Our thanks to Paul Giuliani, Esq., of McKee, Giuliani and Cleveland, Montpelier, for contributing this chapter to the **Handbook for Vermont Selectboards**.)*

CHAPTER 18
COMMUNITY DEVELOPMENT

A. INTRODUCTION

Effective community development has two necessary components. First, it must be of the people, by the people and for the people. It is not a process that can be mandated by the state. Instead, it must occur because people care about their town's economic viability, safety, quality of life, appearance, and appeal to prospective residents and businesses. Second, community development does not just happen. It must be based on the recognition of problems and solid planning to correct those problems.

Actors at the local level may be elected officials, local businesses, banks, or citizens who work together to identify problems, collect data and develop solutions. Financial and technical help may be available from state or federal government agencies but the real solution must be developed locally.

There are several specific community and economic development tools that the state has granted directly to municipalities. These include the statutory authority to undertake tax stabilization and tax increment financing. The state also offers a wide range of community and economic development programs, which are bolstered by the complementary efforts of regional entities and federal agencies.

Following is a discussion of the specific, local community and economic tools available to selectboards for use in their towns. Following this section is a list of state, regional and federal programs which includes contact information and a brief explanation of each program's mission. Keep in mind, however, that while a specific tool or program may be able to solve a particular problem, the process of community development is an all-inclusive one. From a town's land use permitting and property tax policies to its educational and cultural facilities, community development is a multi-faceted process. It is beyond the scope of this handbook to address the comprehensive inventory, planning and implementation work that is the foundation of successful community development. Instead, we hope that an outline of the wide range of available tools and resources will help selectboards work with citizens in their towns to ensure a vibrant, successful community.

B. TAX STABILIZATION

1. **Eligibility.** The Legislature has given municipalities the authority to enter into tax stabilization agreements in order to encourage the following public interests:

   - economic development;
   - alternative energy development;
   - agriculture and forestry; and
   - preservation of open land. 24 V.S.A. § 2741.

   In addition to the authority granted under 24 V.S.A. § 2741, there are other, more specific statutes that deal with tax stabilization for the following types of properties. They are:

   - Factories, quarries and mines, 32 V.S.A. § 3834;

- Private homes and dwellings, 32 V.S.A. § 3836;
- Airports, 32 V.S.A. § 3837;
- Hotels, 32 V.S.A. § 3838;
- Low income housing, 32 V.S.A. §§ 3843, 3844, 5404a((a)(3);
- Public utilities and railroads, 24 V.S.A. § 2743;
- Alternate-energy sources, 32 V.S.A. § 3845;
- Farmland, 32 V.S.A. § 3846;
- Tax stabilization in gores and unorganized towns, 32 V.S.A. § 4985;
- Non-profit fire and ambulance companies, 32 V.S.A. § 5404a(a)(4);
- Certain municipally owned property; and
- Tax exemptions generally, 32 V.S.A. Chapter 125.

One caveat must be mentioned. Vermont's Equal Educational Opportunity Act created a system under which some tax stabilization agreements and other tax exemptions affect only the town's property tax grand list and not the education property tax grand list. This is spelled out in 32 V.S.A. § 5404a.

2. **Implementation.** Tax stabilization may be accomplished in one of three ways: fixing the valuation of a property, fixing the tax rate or amount of tax on the property, or by fixing the tax as a percentage of the total, annual property tax. 24 V.S.A. § 2741(a).

   The *first step* in tax stabilization is for the voters to approve it by a two-thirds majority in the case of commercial or industrial property or by a simple majority vote in the case of other types of property. The voters may give the selectboard authority to enter into stabilization contracts or it may allow the board to negotiate a contract that must then be ratified by the voters. The term of such contracts may not exceed ten years and, in the case of alternative energy plants, may not exceed the term of any licenses or permits needed by the plant. 24 V.S.A. § 2741 (b)(c). Municipalities must also apply to the Vermont Economic Progress Council (VEPC) for approval of certain tax stabilization contracts that they enter into locally (an exception is made for certain pre-existing stabilization agreements, which are allowed to continue until their contractual lifetime has expired). A description of VEPC and the process and criteria for tax stabilization approval is found in 32 V.S.A. § 5930a.

In summary, there are now three tax stabilization alternatives:

1. Agreement to stabilize a portion of the municipal tax liability; decision made at the local level as outlined above.
2. Agreement to stabilize a portion of the municipal and education tax liability; decision again made at the local level. *However, such an agreement does not alter the municipality's liability to the state education fund*. Therefore, the town must still raise enough money to provide the total amount of education tax due to the state. 32 V.S.A. § 5404a(d).
3. The state, upon approval of VEPC, can enter into a stabilization agreement for the state education tax liability. In order for a property to be eligible, the municipality must approve a proportional stabilization of its municipal tax.

A municipality may also apply to VEPC for an allocation of a portion of any increase in its education grand list for up to ten years. If awarded, the revenues from the allocated portion of the education grand list shall be used by the municipality to support economic development through the purchase or financing of infrastructure. 32 V.S.A. § 5404a (e).

C. TAX INCREMENT FINANCING

Vermont selectboards are given the authority to designate tax increment financing districts within their municipalities. Such a district can be utilized by a municipality to raise tax revenues targeted for improvements within (in whole or in part) the district. A municipality may also, with the voters' approval, borrow against the district's revenue to finance the improvements. 24 V.S.A. §§ 1894, 1897.

The district works like this: on the first year of its existence, the lister or assessor for the municipality certifies the assessed valuation of all taxable real property within the district. This value is called the *original taxable value,* and the lister or assessor annually certifies to the selectboard whether this original value has increased or decreased. If the value increases, the taxes gained from this increase (the "tax increment") are reserved for use in the district directly or for debt service on bonds issued for district improvements.

While tax increment financing districts are not widely used by Vermont municipalities, they are helpful in certain situations.

Finally, municipalities which have tax increment financing districts under 24 V.S.A. Chapter 53, subchapter 5, may apply to VEPC to expand these districts and to collect and use the taxes collected. 32 V.S.A. § 5404a(f).

D. TAX EXEMPTIONS

Towns may elect to exempt business personal property tax and/or inventory from the grand list in order to encourage manufacturers and merchants to locate in town. 32 V.S.A. §§ 3848-3849. "Inventory" is defined in Section 3848 and generally means goods held temporarily for sale or use in manufacturing. "Business personal property" is defined in 32 V.S.A. § 3618(c) and generally means tangible, depreciable items used to conduct a business, which are not part of the real property (e.g. tools, machines, books, furniture, etc.).

If the voters do not exempt business personal property from property tax, it may be appraised at fair market value or, subject to a vote at town meeting, it may be appraised by one of the other methods delineated in 32 V.S.A. §§ 3618(a)(1) and (2).

E. HOUSING AUTHORITIES

Because of its public policy concern that safe and sanitary housing be available to all, the Vermont Legislature has granted municipalities the power to create housing authorities. These public corporations are charged with clearing substandard housing and providing affordable, safe and sanitary housing for those in need. 24 V.S.A. § 4001.

To accomplish this, housing authorities have broad powers to own, rent or lease property, invest, borrow, sue or be sued, and to investigate areas of substandard living quarters and plan for and carry out repairs and renovations. 24 V.S.A. § 4008. The seriousness of the problem is reflected

in the statements that "these slum areas cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved through the operation of private enterprise" and that "clearance ... is declared to be a public use for which private property may be taken by eminent domain and public funds raised by taxation." 24 V.S.A. § 4001.

When a governing body determines that there is a need for a housing authority, it may create one by appointing five commissioners and investing in them the power to act as a housing authority. 24 V.S.A. § 4004. These commissioners may not be employees or officials of the municipality, may not own any housing projects and may be removed "for inefficiency or neglect of duty or misconduct in office." 24 V.S.A. §§ 4004, 4006, 4007. Notice and hearing must be provided to a commissioner being removed from office. 24 V.S.A. § 4007. Three members of the board create a quorum and action may be taken by "a majority of those present" unless that housing authority's bylaws say otherwise. 24 V.S.A. § 4004. This means that if three commissioners are present and they vote two to one, a valid vote has occurred. (This is an exception to the general rule concerning quorum and voting and should not be applied to other municipal bodies.)

Housing authorities are subject to other laws, ordinances and regulations such as zoning, septic and electrical codes and the development of a low cost housing project must take into consideration the development of the area in which it is located. 24 V.S.A. § 4013. A municipality that creates a housing authority must fund its first year of operation and may, after that year, provide loans and/or donations to it. 24 V.S.A. § 4023. The authority must charge the lowest possible rent and, at the same time, provide good housing and pay all of its bills (an impressive mandate!). 24 V.S.A. § 4009. The property of an authority is declared to be public property used for essential public and governmental purposes and such property "... shall be exempt from all taxes and special assessments.…" Special agreements may be made for payment in lieu of taxes (PILOT). 24 V.S.A. § 4020.

Provision is also made in state law for housing authorities to function for more than one municipality. First, two or more municipalities may jointly create a single authority. 24 V.S.A. § 4027. Second, two or more separate "authorities may join or cooperate with one another...." 24 V.S.A. § 4011. Finally, a state housing authority is created for the purpose of improving housing through the use of federal funds. 24 V.S.A. § 4005.

F. MISCELLANEOUS

Statutes also give municipalities and groups of municipalities the authority to set aside money for a publicity fund to be used for area development as well as the authority to enter into agreements with towns from adjoining states for the purpose of regional or interstate economic planning and development. 24 V.S.A. §§ 2744, 2779. In addition, economic development grants from the state may be available to help administer regional economic development corporations. 24 V.S.A. Chapter 76.

G. COMMUNITY DEVELOPMENT RESOURCE LIST

1. Agricultural Development

a. Agricultural Development Division. The Division assists in developing ways to increase agricultural use of Vermont lands and resources. It develops and maintains a directory of producers, identifies new markets for Vermont agricultural products, and

assists in maintaining a price reporting system. 6 V.S.A. § 2963. For more information, call the Division at (802) 828-2416.

b. **Vermont Economic Development Authority (VEDA).** VEDA provides a number of programs to help family farmers in Vermont. 10 V.S.A. Chapter 12. For a complete list, visit VEDA online at http://www.state.vt.us/veda, or call them at (802) 828-5627.

- **Family Farm Debt Stabilization Program** provides low interest loans to family farmers to assist in refinancing operating debts.
- **Agricultural Finance Program** provides low interest loans (Family Farm Finance loans) to family farmers and agricultural facilities to encourage diversification, cooperative and innovative farming, and assist in environmental conservation initiatives and measures. Loans are also available to help establish new farms and strengthen existing ones.
- **Vermont Rehabilitation Corporation** administers the Family Farm Assistance Loan Program, which seeks to strengthen existing farms, encourage diversification and innovation, increase energy efficiency, decrease energy consumption, and assist beginning farmers. 10 V.S.A. § 273.

2. **Economic Development**

a. **Economic Advancement Tax Incentives.** The Vermont Economic Progress Council (VEPC) coordinates tax incentives available to businesses and municipalities for economic development activities designed to stimulate quality job growth in Vermont. 32 V.S.A. § 5930a. For more information, call VEPC at (802) 828-5256.

b. **Downtown Program** provides a wide variety of grants, loans and tax credits to promote re-investment in and development of Vermont's downtown areas. For more information, call (802) 828-3211. 24 V.S.A. Chapter 76A.

c. **Vermont Community Development Program** receives federal Community Development Block Grant Funds and awards them to municipalities for projects such as rehabilitation and acquisition of housing and public facilities, lead abatement, planning, home ownership assistance, loans to businesses, disaster assistance, and handicap accessibility. 10 V.S.A. Chapter 29, subchapter 1. For more information, visit the Department of Housing and Community Affairs' website at http://www.dhca.state.vt.us/, or call (802) 828-3211.

d. **Vermont Community Loan Fund (VCLF)** provides technical assistance and support to develop community projects, loan capital to community groups and businesses, and investment opportunities in local community renewal, through two subsidiary loan funds. Visit VCLF online at http://www.vclf.org/ or call (802) 223-1448.

e. **Regional Development Corporations** coordinate job development activities within their respective regions. Information about Vermont's 12 regional development corporations can be found at http://www.thinkvermont.com/resources/regdev.cfm, or call the Department of Economic Development at (802) 828-3080.

f. **Vermont Small Business Development Center** is a non-profit partnership of government, education, and business that seeks to help small businesses succeed and

grow by providing them with counseling and training. Visit them online at http://www.vtsbdc.org/ or call (802) 728-9101.

g. **Vermont Economic Development Authority (VEDA)** was established to help promote economic development and alleviate and prevent unemployment. VEDA administers a number of financial assistance programs including, Direct Loan Program, Local Development Corporation Loans, Industrial Revenue Bonds, Mortgage Insurance Program, Financial Access Program, and the Vermont Job Start Program. 10 V.S.A. Chapter 12. For more information about economic development programs and services offered by VEDA visit them online at http://www.veda.org or call (802) 828-5627.

h. **Revolving Loan Funds.** Capitalized from a variety of sources, many of them federal, these loan funds may be used in conjunction with other sources to leverage additional monies or independently finance a project. Administration of regional funds is generally by a non-profit development corporation; local funds are most often overseen by the selectboard with the help of a loan committee. To obtain a list of the 16 regional and 49 local revolving loan funds, contact the Agency of Commerce and Community Development's Department of Economic Development at (802) 828-3080.

3. Health

a. The **Vermont Department of Health** works to protect and improve the health of Vermonters. Visit http://www.healthyvermonters.info for a list of regulations, reports, newsletters, fact sheets, booklets and brochures, or contact the Department of Health at (800) 464-4343. Other useful telephone numbers include:

- Rabies Hotline, (800) 472-2437;
- Childhood Lead Prevention Program, (800) 439-8550;
- Drinking Water Testing Kits, (800) 660-9997.

4. Historic Preservation and the Arts

a. The **Department of Housing and Community Affairs' Division of Historic Preservation** identifies, protects and promotes Vermont's historic resources. It maintains information and an inventory of historic sites throughout the state, and administers grant programs relating to historic preservation. Visit the Division at http://www.historicvermont.org/ or call (802) 828-3211.

b. **Rehabilitation Income Tax Credit (RITC)** is a federal income tax credit available to owners or long-term lessees of historic buildings used for businesses or rented to others. Twenty percent of the qualified rehabilitation costs are eligible to investors as a tax credit. For additional information, contact the Division of Historic Preservation at (802) 828-3211.

c. **Vermont Arts Council** provides funds, services and information to "advance the arts for the benefit of all." For specific information on grants and services, visit the Council on-line at http://www.vermontartscouncil.org/, or call (802) 828-3291.

5. Housing

a. **Vermont Housing and Conservation Trust Fund** provides grants for the creation of affordable housing and conservation of Vermont's agricultural lands and its natural and

historic resources. Call the Vermont Housing and Conservation Board at (802) 828-3250, or visit them online at http://www.vhcb.org/.

b. **Vermont Housing Finance Agency (VHFA)** finances and promotes affordable housing opportunities. To request an information packet or for additional information, call them at (802) 864-5743 or visit them online at http://www.vhfa.org/.

c. **Vermont State Housing Authority** was created to improve housing conditions through federal resources. The Authority is responsible for allocating federal money for low-income housing projects and improvements. For more information, visit them online at http://www.vsha.org/, or phone (802) 828-3295.

d. **Vermont Department of Housing and Community Affairs** provides assistance and information for land use planning, historic preservation, community development, housing and grants management. The Department has an online document library to access a great deal of information and resources. Visit the Department online at http://www.dhca.state.vt.us/, or call (802) 828-3211.

e. **U.S. Department of Housing and Urban Development (HUD)** offers a wide variety of programs to help with community development projects and to create affordable housing. Visit them online at http://www.hud.gov/ or call the local HUD office at (802) 951-6290.

6. Human Services

a. Long Term Care Community Coalitions (LTCCC) are partnerships focused on local decision-making, to improve the quality of life for Vermonters. For further information, call (802) 241-2326 or visit the Department of Disabilities, Aging and Independent Living online at http://www.dad.state.vt.us/.

b. Community Grants Available through the Agency of Human Services. For a list of grants available to communities for programs relating to alcohol and drug abuse, child care services, juvenile justice and delinquency prevention and safe and drug-free schools and communities, contact the Agency of Human Services at (802) 241-2950 or visit their website at http://www.ahs.state.vt.us/.

c. Regional Community Action Agencies are five private, non-profit corporations created to address issues regarding poverty in Vermont. They organize and operate a variety of social service, food and nutrition, emergency assistance, and housing and energy programs for the benefit of individuals, groups, and municipalities. For a list of all five agencies, contact the Vermont Agency of Human Services' Community Services director at (802) 241-3570.

d. **Area Agencies on Aging.** For information on helping senior citizens and people with disabilities live independent lives, phone (800) 642-5119.

7. Infrastructure

a. **Vermont Agency of Natural Resources** is responsible for protecting Vermont's natural resources and managing state-owned lands. For information regarding state land use permits and regulations, water quality, air quality, waste management, state lands, fish and wildlife, and educational resources, visit the Agency online at http://www.anr.state.vt.us/ or call (802) 241-3600.

b. **U.S. Department of Agriculture (USDA)** runs Rural Development Programs through their Office of Community Development, Rural Housing Service and Rural Business Cooperative Service. For information on these programs, visit the USDA online at http://www.usda.gov/ or call (202) 720-2791.

c. **Vermont Agency of Transportation** administers a variety of grant and loan funds for local highway and bridge projects, including federal SAFETEA-LU funds for transportation "enhancement" (related to transportation) projects. For more information, visit the Department on line at http://www.aot.state.vt.us/.

d. **Vermont Municipal Bond Bank** is a legislatively established, independent unit of state government that provides access to low cost, tax-exempt capital financing for Vermont's municipalities. It issues regular and revenue bonds to finance projects such as school additions, highway renovations, water system improvements, solid waste projects and electrical department expansions and upgrades. For more information, contact the Bond Bank at (802) 223-2717, or visit http://vtbondagency.org/counsels.html.

8. Planning

a. **Regional Planning Commissions.** Twelve commissions around the state assist municipalities with land use and transportation planning issues. For a list of them with contact information see Chapter 21, Planning, or visit the Vermont Association of Planning and Development Agencies at http://www.vapda.org/.

CHAPTER 19
MUNICIPAL LIABILITY

A. SOVEREIGN IMMUNITY

Sovereign immunity is a common law doctrine adopted by the Vermont Supreme Court in the mid-1800s. Generally, the doctrine operates to protect a municipality from tort (e.g., personal injury and property damage) liability. Since adopting the doctrine, the Vermont Supreme Court has attempted to limit its application by applying a governmental function/proprietary function distinction. The rationale for the distinction is that municipalities perform governmental responsibilities for the general public as instrumentalities of the state; they conduct proprietary activities only for the benefit of the municipality and its residents. A municipality is given no immunity for its proprietary activities.

While the conceptual difference between governmental and proprietary functions is fairly clear, the practical difference is not. In fact, the courts in most states have found the distinction so unworkable that they have rejected the doctrine of sovereign immunity entirely. In a dissent to a 1997 published opinion, Justice Dooley stated, "the governmental/proprietary distinction is neither appropriate nor workable and should be abandoned." *Hillerby v. Town of Colchester***,** 167 Vt. 270 (1997). While the doctrine is still good law, the Court has signaled that its reluctance to meddle in sovereign immunity is not limitless and given an extended period of non-action by the Legislature and the right facts, the Court may abandon the doctrine altogether.

Because the governmental/proprietary distinction is essentially a question of fact, prospectively laying out a bright line rule for its application is nearly impossible. Each application necessarily turns on the facts of the particular case and 150 years of oft-confusing case law. For this reason, VLCT advises a conservative approach to the sovereign immunity doctrine and its application. Sovereign immunity is a powerful doctrine, but one whose nuances may result in a false sense of security for municipal officials. When considering any action that may result in tort liability, the doctrine of sovereign immunity should never be relied upon as the town's first line of defense.

1. Waiver of Sovereign Immunity. When a municipality or a county purchases liability insurance, it waives sovereign immunity to the extent that it has insurance coverage. 29 V.S.A. § 1403. For example, if a town has liability insurance up to $100,000 per occurrence, then it may be sued and held liable for up to $100,000 worth of damage resulting from an incident. An important exception to this rule is found in 24 V.S.A. Chapter 121, Subchapter 6. That statute authorizes municipalities to enter into inter-municipal agreements to provide self-insurance (e.g. VLCT Property and Casualty Intermunicipal Fund [PACIF]). Participation in such an agreement " shall not ... constitute a waiver of sovereign immunity" because such an activity is "an essential governmental function." 24 V.S.A. § 4946.

B. STATUTORY IMMUNITY FOR MUNICIPAL VOLUNTEERS, EMPLOYEES AND OFFICERS

There are situations where the interests of the municipality and its officials or employees diverge. Generally, in the case of a municipal employee or volunteer, or an elected town or town school district official, any legal action must be brought against the town or school district rather than against the individual employee, volunteer, or officer. 24 V.S.A. §§ 901-901a. However it

should be noted that an action may be brought against "a duly appointed public or peace officer of [a] village," and the village may choose whether or not to defend the official in that action. 24 V.S.A. § 1313.

C. OTHER IMMUNITIES

1. **Immunity for Quasi-Judicial Acts.** Generally, officials are not liable for judgments or actions taken while acting in a quasi-judicial capacity so long as they are not negligent and they are acting in good faith. *First Universalist Soc. in Fletcher v. Leach*, 35 Vt. 108 (1862).

2. **Immunity for Legislative Acts.** The U.S. Supreme Court has held that local officials are immune from civil liability when they are performing a legislative function, just as state and federal legislators are. *Brogan & Roderick v. Scott-Harris*, U.S. No. 96-1569 (March 3, 1998). Selectboards perform legislative acts when they adopt policies, bylaws and ordinances. Therefore, a board member could not be sued for actions taken in adopting such regulations. This is not to say that a court might not find an ordinance or bylaw unconstitutional or that the enforcement could not be held improper due to arbitrary and capricious application. It merely immunizes the officials when they are adopting legislation.

3. **Immunity Based on a Signed Waiver.** Municipalities sometimes require that people who wish to participate in some activity (such as recreation department programs) sign a waiver absolving the municipality from liability for any damages incurred during the activity. Waivers (also called exculpatory agreements) may provide protection for the municipality in the case of inherent risk such as sprained ankle while rounding second base or broken wrist due to a fall while playing hockey. However, a court is unlikely to uphold a waiver which is too broad or when there was actual negligence on the part of the municipality. For example, if a softball player trips over a mower while running for a foul ball, that will likely not be found to be an inherent risk and the municipality will probably be found negligent.

4. **Immunity Based on "Good Samaritan" Laws.** Several laws provide varying degrees of protection for municipalities and/or individuals who perform Good Samaritan acts. For example:

   - Volunteer emergency service providers under certain circumstances. 12 V.S.A. § 519; 24 V.S.A. § 2687.
   - Good faith donors of food. 12 V.S.A. § 5761-5762.
   - Certain persons responding to actual or threatened hazardous materials emergencies. 12 V.S.A. § 5783.
   - Municipalities which acquire public water systems or sources. 18 V.S.A. § 122 (e). and
   - Fire personnel responding to a fire or accidental or natural emergency. 20 V.S.A. § 2990.

D. HIGHWAYS AND BRIDGES

Selectboards are given broad authority and a duty to maintain town highways. Generally, the board has discretion in its care of the highways but there is a mechanism for citizens to proceed in a situation where they feel that "a highway or bridge is out of repair or unsafe for travel." 19 V.S.A. § 971.

In contrast to highways generally, special liability is imposed in the case of bridges and culverts. Where damage or injury is the result of "insufficiency or want of repair of a bridge or culvert," the injured party may proceed against the town (or towns) in a civil action. 19 V.S.A. § 985.

E. OTHER AREAS OF CONCERN

1. **Section 1983: Civil Rights.** Under federal law, individuals may not be deprived of those rights, privileges or immunities "secured by the Constitution and laws." The U.S. Code 42, Section 1983 creates an action for damages where people have been deprived of their rights. Municipalities and municipal officials are prohibited from depriving people of their rights. *Monell v. New York City Dept. of Social Services*, 43 U.S. 658 (1978); *Maine v. Thibout*, 100 S. Ct. 2502 (1980). Municipal officials may be found to have qualified immunity where they have acted in good faith, but such immunity is not a defense for the municipality itself. *Owen v. City of Independence*, 445 U.S. 622 (1980).

   Sovereign immunity does not apply to actions brought under Section 1983. However, a plaintiff must show that the act complained of was not an isolated incident but was a part of a policy or custom of the municipality.

   There is a significant amount of activity under Section 1983, involving sexual harassment, gender bias issues, voting rights, employment issues, racial bias, search and seizure procedures, etc. Towns must have clear policies and procedures and must *ensure that they are followed*. Merely having a policy filed away somewhere will not suffice. When a municipality is found guilty of a violation, it may be liable for damages plus attorney's fees.

2. **Employment Discrimination and Employee Entitlements.** Municipalities are subject to a number of laws here, including:

   - the Fair Labor Standards Act (age, wage and overtime requirements);
   - the Americans with Disabilities Act and the Vermont Fair Employment Practices Act;
   - the federal and Vermont Family and Medical Leave Acts;
   - Workers' Compensation law; and
   - OSHA and VOSHA workplace safety requirements.

3. **Personnel Matters.** Discharge of employees is an area with many pitfalls. Some employees are unionized and fall under the specific mandates of their union contracts. Even without a union contract, other employees may have certain procedural due process rights in matters affecting their relationship with their municipal employer. In the past, employers and employees operated under an at-will arrangement, which meant that one could quit or be disciplined or fired at-will. With the development of various laws and of personnel policies, employees have gained some employment rights and an expectation that they cannot be fired without reason and without some fair process.

   Before discharging an employee, ask yourself:

   - Is there a union contract?
   - Is there a written employment contract?
   - Is this an at-will situation or is just cause required for discharge?

- Is the employee a person who is a member of a protected class (e.g. race, gender, disabled, sexual preference)?
- Has the employee done anything recently for which discharge may be seen as retaliation by the employer (e.g. taken or requested excessive leave, been a "whistle-blower" or filed a workers' compensation claim)?
- Is there a personnel policy and has the municipality followed it?
- Is there a specific statute governing this situation?
- Is the person an elected official and thus immune from discharge?

This area of law is complex, quite changeable and quite fact-specific for each case. It is much safer to consult a personnel expert or an attorney before taking any action. It may also be much less expensive than litigation brought against the town by an angry employee or ex-employee.

4. **Land Use Regulation and "Takings."** Municipalities have a limited right to regulate and to "take" private property. The authority to regulate through planning and zoning is given by 24 V.S.A. Chapter 117. The limitations on that right are constitutional ones:

> "That private property ought to be subservient to public uses when necessity requires it, nevertheless, whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent of money." *Vermont Constitution, Chapter I, Article 1*.

Likewise, the state may not:

> "… deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." *U.S. Constitution, XIV Amendment*.

These constraints mean that planning and zoning bylaws must be drafted carefully to advance a legitimate municipal interest. A court will look to the town plan to determine if a challenged bylaw or action by the town reflects a stated purpose or goal of the town and will ask if that stated purpose is a legitimate one. Bylaws must be enforced fairly and equally. Arbitrary or discriminatory enforcement of bylaws (or of any ordinance) will be held unconstitutional. In addition, property owners must have notice of the town's actions or decisions and must have an opportunity to be heard on appeal. Even the adoption of bylaws that will curtail property rights must provide for notice and an opportunity to be heard before those laws go into effect.

Note that municipalities have authority to take or to regulate the use of property in other ways, such as condemnation or eminent domain, adoption of housing codes and nuisance ordinances, regulation of solid waste dumping and the prohibition of backyard burn barrels. All of these takings of private property or constraints on the owner's use of private property are areas of potential liability and must be approached carefully and, when in doubt, with the advice of legal counsel.

F. MUNICIPAL LIABILITY AND SPECIAL EVENTS

Many of Vermont's cities, towns and villages host at least one special event each year. These municipalities have discovered that festivals and fairs can be excellent sources of revenue and great generators of community spirit.

But whether they are organized by a municipality or by another organization in town, special events require careful planning to minimize a municipality's liability exposure. Even though the municipality does not organize an event, you may have some responsibilities if the activity involves the use of public facilities or necessitates municipal services.

Generally, a special event is defined as any organized assembly or activity conducted by an individual or organization for a common purpose. Examples of special events include parades, circuses, fairs, participation sports (such as marathons or bike tours) and spectator sports (youth football or baseball games).

- **Exposures, Risks.** Some of the major loss exposures for special events include damage to public property, such as equipment and machinery, and lost work time and medical costs for public employees who may be injured during an event. The municipality is also exposed to liability losses for civil rights violations, injuries to attendees and damage to private property.

  If the municipality knows, or should reasonably have been expected to know, about a dangerous condition but did not repair it or warn others about it, injured parties would be able to show that the municipality violated its duty of care. Thus, they could expect compensation for injuries or damages.

- **Buildings and Facilities.** Inspect all permanent and temporary structures, such as bleachers, grandstands or stages. If private groups plan to build any structures, make sure they have the necessary building permits. Also be sure that the lighting is safe and adequate for night events and that portable toilets are provided, if necessary.

- **Fire Safety.** The fire department should review the projected occupancy of all enclosures, use of tents or other fabric structures, handling of vehicle fuel, cooking facilities and any use of an open flame or fireworks. All electrical systems installed for the event should also be inspected. Make sure that all groups have the necessary fire department and fire warden permits.

- **Cleanup Plans.** All participating groups should have a plan for cleaning up the premises or streets after an event. They should be notified in writing prior to the event that they will be billed for any repairs if they damage public property.

- **Law Enforcement and Safety.** Make sure that there are enough law enforcement and other emergency personnel to ensure the safety of all participants.

- **Traffic Control.** Map out parking areas and travel routes to and from an event site to avoid traffic problems, both for event attendees and non-participants who must travel through the area. Special care must be taken concerning the placement of barriers, cones and temporary signs. It is especially important to keep emergency routes open for ambulances, fire trucks, and other emergency vehicles. You may not want to hold or permit a special event at a time and place that is normally already crowded.

- **Food Facilities.** If food will be served or sold at the event, make sure that food handling, preparation and distribution comply with health codes. For liability reasons, it is

recommended that no alcoholic beverages be permitted at municipal events or on municipal property.

- **Contracts.** Many municipalities require groups to provide certificates of insurance and hold-harmless agreements when they participate in an event on municipal property.

  If the group has insurance, the municipality should be named as an additional insured for specific amounts and types of coverages, to ensure that the group is financially able to pay for losses. Hold-harmless agreements are useless if the group is not able to pay for losses; injured parties may still seek compensation from the municipality.

  If the group leases a public facility for an event, make sure the lease contains a hold-harmless agreement and a certificate of insurance requirement. Under a leasing arrangement, the municipality gives up control of the facility and would be held liable only if it knew about a dangerous condition and did not notify the lessee.

CHAPTER 20
MUNICIPAL PLANNING AND ZONING

A. INTRODUCTION

Municipal land use planning is the process of assessing current conditions in a community, envisioning a desired future, and charting a course towards that future. It involves multiple stakeholders, which many times include property and business owners, elected and appointed municipal officials, and even those who come into your town to shop, recreate and work. Planning encompasses many activities, including adopting town plans and municipal bylaws, capital budgeting, development review, and enforcement.

As explained in the Introduction of this handbook, Vermont municipalities are political subdivisions of the state. Like all functions of local government, authority to engage in planning activities is granted by the Legislature. The Vermont Legislature first provided municipalities the opportunity to undertake local land use planning in the 1920s. Since then, the Legislature has passed extensive enabling legislation that allows communities to conduct a wide range of activities related to local land use planning and regulation.

The goals for both the process and content of municipal land use planning can be found in 24 V.S.A. § 4302 and reflect "the intent of the Legislature that municipalities, regional planning commissions, and state agencies shall engage in a continuing planning process that will further the following goals:

- "To establish a coordinated, comprehensive planning process and policy framework to guide decisions by municipalities, regional planning commissions and state agencies;
- To encourage citizen participation at all levels of the planning process, and to assure that decisions shall be made at the most local level possible commensurate with their impact;
- To consider the use of resources and the consequences of growth and development for the region and the state, as well as the community in which it takes place; and
- To encourage and assist municipalities to work creatively together to develop and implement plans." 24 V.S.A. § 4302(b).

To that end, this chapter contains a brief discussion of the rules for municipal planning and how those rules impact the roles and responsibilities of the legislative body (selectboard, city council and village trustees), planning commission, appropriate municipal panel, planners, regional planning commissions, and others who play pivotal roles in local land use administration.

B. ROLES AND RESPONSIBILITIES IN MUNICIPAL LAND USE

Most municipal officials have distinct roles that are delineated both by statute and by function. Within the local land use system, there are legislative, quasi-judicial, and administrative functions. The broadest function is legislative and involves not only drafting and approval of the municipal plan and bylaws, but also conducting public hearings to determine the future direction of the community. The **legislative function** is shared by the planning commission and the selectboard, city council, or village trustees.

In contrast, the **quasi-judicial function** involves interpreting and applying the land use regulations. It is occupied by the appropriate municipal panel (AMP), which may be the planning commission, development review board, or zoning board of adjustment, depending on the structure established by the municipality.

The **administrative function** involves mostly non-discretionary acts such as issuing permits, enforcing bylaws and assisting applicants. The administrative officer commonly referred to as the zoning administrator (ZA) occupies this function.

1. **Planning Commission.** A planning commission can be created at any time by the legislative body (selectboard city council, or village trustees). 24 V.S.A. § 4321 (a). Planning commissions must have at least three but no more than nine voting members, the majority of whom must be residents of the municipality. The legislative body appoints and sets the term lengths of planning commission members. As an alternative, state law also permits municipalities to elect planning commissioners for four-year terms. 24 V.S.A. § 4323 (c).

   In its legislative role, 24 V.S.A. § 4325, state law provides planning commissions with broad authority to plan for the future needs of their communities, which may be addressed in drafting and maintaining a current municipal plan and identifying tools, regulatory and non regulatory, to implement the plan. In support of that role, the planning commission has powers to:

   - prepare and recommend a capital budget;
   - undertake capacity studies and make recommendations on matters of land development, urban renewal, transportation, and economic and social development;
   - require information from other departments of the municipality that relates to the work of the planning commission;
   - participate in a regional planning program;
   - retain staff and consultant assistance; and
   - perform such other tasks as it may deem necessary or appropriate to fulfill the duties and obligations imposed by Chapter 117 of Title 24.

   The planning commission solicits public input, weighs options and makes policy decisions, some of which will chart the future of the community and which may eventually have the force and effect of law. As such, it must take care to represent all members and interests of the community. To this end, the board should seek maximum feasible participation by other public officials, interest groups, civic groups, and citizens.

   State law also allows planning commissioners to convene as an "appropriate municipal panel" to review development applications under the land use laws. When reviewing development applications, the planning commission is acting in a quasi-judicial capacity.

2. **Appropriate Municipal Panel**. An appropriate municipal panel (AMP) is defined as "a planning commission performing development review, a board of adjustment, a development review board, or a legislative body performing development review." 24 V.S.A. § 4303(3). The AMP acts in its quasi-judicial capacity when reviewing applications for land development. The two most common organizational development review models are a planning commission and a zoning board of adjustment (PC/ZBA) or a planning commission and a development review board (PC/DRB).

- **PC/ZBA Model**. As mentioned above, planning commissions can work in both a legislative or quasi-judicial function. The planning commission, in its quasi-judicial capacity, reviews land use development applications for site plan and subdivision review. The zoning board of adjustment exercises its quasi-judicial authority in review of conditional use applications, appeals of administrative officer decisions and requests for variances. Many municipalities still operate under the planning commission/zoning board of adjustment model, though an increasing number are seeking to separate the legislative and quasi-judicial functions through the creation of a development review board.
- **PC/DRB Model**. Planning commissions become a purely legislative entity, with authority to draft the town plan and use both regulatory and non-regulatory tools to implement the plan. The development review board becomes the quasi-judicial entity responsible for hearing all development review applications, including applications for site plan, subdivision, variance, conditional use, administrative officer appeals, and any other reviews authorized by the bylaws, including local Act 250 review.

  A strength of the PC/DRB model is that it vests all legislative functions with a planning commission, and all development review functions with a development review board. Separating the legislative and quasi-judicial functions allows more planning to occur and streamlines the development review process for applicants.

Regardless of which local board serves as the appropriate municipal panel, its role is to hear and review applications for development under the applicable bylaws. The AMP can only approve applications that comply with the applicable bylaw or state law, and the board can only apply conditions that are permitted under the bylaw. By the same token, if a project meets the applicable bylaw criteria, the AMP must grant the approval.

3. **Administrative Officer.** The administrative officer (also known as the zoning administrator, or ZA) is the primary contact for those affected by local zoning bylaws. The legislative body (selectboard, city council or village trustees) appoints an administrative officer for a three-year term promptly after the first bylaws are adopted or when a vacancy exists. The appointment is made at the recommendation of the planning commission. After consulting the planning commission, the administrative officer may be removed for cause. An administrative officer may not be a member of the zoning board of adjustment or development review board.

   State law (24 V.S.A. § 4448) requires the administrative officer to administer the bylaws literally and prohibits granting permits for any land development that does not conform with the bylaws. For those permit applications that require a prerequisite review, the administrative officer refers the application to the appropriate municipal panel, and may only issue a permit after the AMP grants approval. Any action or inaction by the administrative officer may be appealed to the AMP. In addition to the permit review function, the administrative officer is responsible for providing the necessary forms to applicants and "should coordinate a unified effort on behalf of the municipality in administering its development review program."

   Enforcement of zoning violations is another responsibility of the administrative officer. He or she should keep in close contact with the selectboard, which provides the funding for the land use program, and keep the board apprised of enforcement needs in the community. The legislative body, having initiated a regulatory program through the adoption of bylaws,

should understand the importance of adequately funding the program, including paying for enforcement proceedings and enlisting the services of the municipal attorney. Only the local legislative body has the authority to pursue an enforcement claim in court.

Many administrative officers also play a broader role in staffing the planning commission or appropriate municipal panel. For those staffing AMPs, the role of the administrative officer is varied and may include guidance in the review process, keeping minutes for the board, preparing staff reports on an application or even drafting the written decision for the board.

4. **Selectboard, City Council, Village Trustees (Local Legislative Body).** The legislative body plays an important role in developing a successful land use and implementation program in any municipality. The legislative body will set the tone by showing its support, including incorporating the municipal plan into decisions regarding public investment (such as sidewalks); including the planning commission in discussions of ordinances and policies with land use implications (such as those concerning roads or sewers); including reasonable budget requests from the planning commission and the AMP; ensuring that the various boards and commissions are comprised of able volunteers and are appropriately staffed; and providing funding for training and education of those volunteers.

   One of the legislative body's most important functions is to appoint and remove members of the planning commission (when not elected), the appropriate municipal panel, any advisory commissions, and the administrative officer. In this capacity, the legislative body represents the voters, serves as the accountability mechanism, and ensures that the expectations of the position are being fulfilled. In addition to managing the people involved in the land use program, the legislative body retains much of the final authority over the adoption of the various non-regulatory documents (including the municipal plan), capital budget, and any regulatory tools such as zoning and subdivision regulations.

   Finally, it is crucial for the selectboard to maintain an ongoing relationship with the various land use officials. An open dialogue will foster a better understanding of land use planning and implementation in the community, and will help keep difficult situations from becoming outright political battles. Some municipalities have instituted annual or other regular meetings between the legislative body and the various boards and commissions in order to promote strong relationships and open communication. To this end, it is worth noting that the selectboard members of a rural town, or two appointees of the legislative body in an urban municipality, are "ex-officio members of the planning commission." 24 V.S.A. § 4322.

5. **Professional Planners.** A wide variety of planning professionals can assist a municipality with its planning needs.

   A professional **staff planner** can make significant contributions to a successful land use planning and implementation program. Planners are trained in facilitating public processes, can provide in-depth analysis of development applications, and bring professional knowledge that is so vital in a unique and rapidly changing field. A growing number of Vermont municipalities dedicate resources to employ a staff planner. Small towns could pool resources and share a planner with an adjacent community.

   Regional planning commissions were first created as a result of towns getting together to consider planning and development issues on a larger than local basis. Their role has evolved into developing land use policy at the local, regional and state levels. They are staffed by

professionals with training in land use, transportation, emergency management and watershed planning, as well as geographic information systems mapping, brownfields planning and other areas of expertise.

Under the current statute, every municipality is a member of a regional commission designated for that geographic area. A board of commissioners, comprised of representatives from each participating municipality, governs each of the 11 regional commissions. The legislative body is responsible for appointing a representative to the board of commissioners and may remove the representative at any time upon majority vote of the entire body. 24 V.S.A. § 4343. Representatives may be compensated and reimbursed by their municipalities for necessary and reasonable expenses. 24 V.S.A. § 4342.

Frequently, regional commissions provide technical assistance to local planning commissions by drafting municipal plans and bylaws as well as other local regulatory and non-regulatory documents. In order for a town to qualify for state and federal grant funding, the regional planning commission must approve the municipal plan. State law requires that a local plan be consistent with the state planning goals. 24 V.S.A. §§ 4350(b)(1), 4382(a). Other tasks regional planning commissions may perform include coordination of local and regional mapping projects, and participation in state-level reviews, such as Act 250 or Section 248 proceedings (the certificate of public good process for electric generation and transmission facilities). 24 V.S.A. § 4345a. For a link to each of the 11 regional planning commissions, visit www.vapda.org.

The **planning consultant** is another significant player in local land use planning. Planning consultants can play a valuable role in providing expert drafting of municipal plans, bylaws and other regulatory documents. Local land use officials often look to planning consultants to deal with unique planning issues in their municipalities, such as developing design review guidelines, transportation planning for a failing intersection or finding creative ways to revitalize a downtown.

Typically, consulting planners work closely with the local planning commission, but may also work with the legislative body, municipal employees, and the public. An effective planning consultant will distill information gathered through contact with all stakeholders into documents that express the community's vision for its future. A consultant will be able to translate information gleaned from this collaborative process into a municipal plan, bylaw or other implementation tool. For a list of planning consultants, contact the Vermont Department of Housing and Community Affairs, or visit www.dhca.state.vt.us/Planning/PlanningConsultants.xls.

Many communities do not have the funds within their municipal budget to pay for expert consultation. Through 24 V.S.A. § 4306 the state maintains a municipal and regional planning fund from the property transfer tax revenue. Each year, 20% is disbursed to municipalities in support of local planning.

6. **Advisory Commissions.** Under 24 V.S.A. § 4433, a legislative body may create advisory commissions that may counsel the appropriate municipal panel, legislative body, applicants, and interested parties on matters ranging from municipal plan and bylaw amendments to development review applications. Oftentimes, towns with historically significant properties, important natural features, unique housing pressures, or other special concerns requiring a

particular expertise create an advisory commission to assist the legislative and quasi-judicial boards in their roles.

These committees have broad authority and may engage in any activity that assists the legislative body or planning commission with preparing, adopting and implementing the municipal plan. Advisory commissions must have at least three members, all of whom are appointed by the legislative body. The most common advisory commissions are conservation commissions, historic preservation commissions, design review commissions, and housing commissions.

C. MUNICIPAL PLANNING

1. **The Town Plan.** The town plan is a first step in a municipal planning process. The town plan is a statement of policy that will guide municipal decision-making with regard to many elements including transportation, land use, utility infrastructure, energy, housing and conservation. It will aid the private sector as a predictor of how local government will act. The town plan also becomes a document that enables the community to engage in other planning activities including adopting zoning and subdivision regulations, capital budgeting and levying impact fees. Once adopted, all development projects subject to state land use review (Act 250) must be consistent with the town plan. A community with a current town plan is also eligible to receive state and federal funding for planning activities.

   State statute provides that at least ten elements will be addressed in a town plan. 24 V.S.A. § 4382. In addition to the prerequisite elements, a community has the flexibility to expand the scope and content of the town plan to further address the goals in 4302 (b); and may include other topics, such as economic development, the arts, and telecommunication and wind power generation facilities. Regional planning commissions approve town plans to assure that municipal plans meet state planning goals, and adequately address the ten required planning elements.

The ten required elements of a town plan are:

1. A statement of the objectives, policies and programs of the municipality;
2. A land use plan (map and statement);
3. A transportation plan (map and statement);
4. A utility and facility plan (map and statement);
5. A statement on the preservation natural areas, scenic and historic features and resources;
6. An educational facilities plan (map and statement);
7. A recommended program for the implementation of the plan;
8. A statement of how the plan relates to plans and development trends of neighboring communities and the region;
9. An energy plan; and
10. A housing element, which addresses low and moderate housing needs.

Once adopted, the town plan will expire after five years unless re-adopted or amended. Upon the expiration of a plan, all bylaws and planning programs shall remain in effect but may not

be amended until the town plan is re-adopted or amended, which will start the five-year clock again. 24 V.S.A. § 4387(c).

The planning commission undertakes the initial drafting of a plan. However, an amendment to the plan may be prepared by, or at the direction of, the planning commission, or by any other person or body. Amendments supported by a petition signed by five percent of the voters of the municipality may also be brought before the planning commission. The planning commission may only correct technical deficiencies before the proposed amendment proceeds according to 24 V.S.A. § 4384 (c) through (f).

Once the planning commission forwards a proposed plan or amendment to the legislative body, at least one public hearing shall be noticed and held. The legislative body may make changes to the document at this time. If the changes are substantial and alter the "concept, meaning or extent of the proposed plan" new public hearings shall be warned. Once the hearing process is complete, the proposed town plan may be adopted by a majority of the members of the legislative body at a new meeting. 24 V.S.A. § 4385. (An alternative to the adoption by the legislative body is adoption by the voters.) All proposed plans become effective upon adoption. If a plan or amendment is not adopted within one year of the date of the final hearing of the planning commission, it shall be considered rejected by the municipality. 24 V.S.A. § 4385 (c).

Although the resulting final document makes a community eligible for significant benefits, the public planning process itself has value. The process of vetting alternatives futures, drawing attention to municipal government and engaging stakeholders will only strengthen future planning activities.

2. **Implementation.** Any town that has adopted a town plan can use regulatory and non-regulatory tools to implement the plan. Many towns rely heavily on regulatory tools, but an implementation program that integrates both sets of tools will result in a more effective program. Regulatory tools include bylaws (zoning, site plan, telecommunications, subdivision and flood plain), impact fees, transfer of development rights and an official map. 24 V.S.A. § 4402. Non-regulatory tools include capital budgeting (see *Chapter 16, Finances*), establishing tax increment finance districts, permitting tax stabilization contracts (see *Chapter 18, Community Development*), and developing other plans in support of the town plan. But a municipality is not limited in its efforts to implement the town plan.

Examples of Non-Regulatory Tools

- Tax increment financing, which can be used to fund projects within a discrete area of the municipality, such as sidewalks, increased police presence, or a parking garage;
- Tax stabilization contracts, which can help a municipality promote development in the community by certain businesses or types of businesses;
- Purchase or acceptance of development rights, which can assist a municipality in preserving undeveloped land;
- Plans supporting the municipal plan, which may be sub-plans concerning unique portions of a community; and
- Advisory commissions, which can assist other municipal officials in addressing issues like affordable housing, historic preservation, design review and conservation.

Chapter 117 gives municipalities expansive authority to regulate land development. A municipality may regulate development through its bylaws so long as the bylaws conform to the approved town plan. The most commonly used regulatory tools are zoning and subdivision bylaws, which can be combined with other freestanding bylaws into unified development bylaws. Unified development bylaws make for a consolidated permitting and review process. Bylaws, either freestanding or combined, permit, prohibit, restrict, regulate, and determine land development.

Zoning bylaws regulate land use, and the density and disposition of that land use. 24 V.S.A. § 4411. There are many different permissible types of zoning regulations that may be adopted by a municipality including zoning districts and supplementary overlay districts. Within each district, bylaws will typically define the types of development (uses) that are allowed within the district, and provide various standards that the use must comply with in order for a permit to be issued.

Vermont land use law contains provisions for the equal treatment of housing, procedures for small lots, and defines how municipalities may regulate uses such as childcare homes and facilities and telecommunication facilities, among others. 24 V.S.A. § 4412. In addition, state law provides special protections for certain uses including educational institutions, hospitals, and solid waste management facilities. These uses may only be subjected to limited types of regulations and only to the extent that regulations do not interfere with the intended use. There are even uses exempt from local regulations, including public power generating and transmission facilities, and agricultural uses. 24 V.S.A. § 4413.

Uses are typically separated into two categories: permitted and conditional uses. Uses other than single-family and two-family dwellings, even if permitted, will require at least site plan review by the appropriate municipal panel for conformance with standards governing site improvements. 24 V.S.A. § 4416. If the use is categorized as conditional, the AMP will consider whether the proposed use will conform to the standards in the district and whether the proposal will have an undue adverse affect on the district and the community. (State law provides general standards for making an undue adverse affect determination.) If approval of either site plan or conditional use is granted, the administrative officer must issue the permit.

Waiver standards are a tool to allow a reduction in dimensional requirements in accordance with specific criteria in the bylaw. 24 V.S.A. § 4414(8). As envisioned, waivers would be used only to provide relief from dimensional requirements in certain situations spelled out in the bylaws, and would permit mitigation of a compliance problem through screening, design, or other remedy. Waivers allow municipalities to preserve the integrity of their bylaws and avoid the pressure to approve an otherwise valuable project by issuing a variance. In order to enact a waiver provision in a local bylaw, the municipality must define the process by which waivers may be granted and appealed.

While zoning and site plan regulations address the way a particular lot is developed, **subdivision regulations** control the pattern of development − the way land is divided up to accommodate uses and supporting infrastructure such as roads and utilities. Similarly with all prerequisite reviews, subdivision review is conducted by the appropriate municipal panel as specified in the regulations. Subdivision regulations are strengthened when supported by zoning bylaws regulating lot size and density. In the simplest sense, subdivision regulations

are meant to ensure that the division of land into smaller units results in lots or parcels that are useable, safe and reflect the physical characteristics of the site.

Planned unit development (PUD) **standards** allow for flexibility in the design of subdivisions. PUD standards are enacted to accomplish the goals in 24 V.S.A. § 4302 and must conform to the purposes of the municipal plan and bylaws. 24 V.S.A. § 4417. The review procedures and application materials for PUD review should be clearly articulated in the regulations, as well as the review criteria for varying densities, dimensional requirements and uses not otherwise permitted under the bylaws. Towns may also include provisions to encourage mixed-use development. Other permitted PUD standards include provisions for phasing, requirements for public or private improvements, and payment of impact fees. The regulations should coordinate the review process with other required reviews by the appropriate municipal panel.

Some municipalities choose not to adopt zoning or other regulations. Nevertheless, the Federal Emergency Management Agency requires that there be municipal **flood hazard regulations** before insuring properties located in flood hazard areas. Therefore, many municipalities without regulatory implementation tools will have a freestanding flood hazard bylaw. Some provisions of zoning such as variance provisions must be applied to flood hazard regulations and other freestanding bylaws. Municipalities with a zoning bylaw commonly incorporate flood hazard regulations into the bylaw. See 24 V.S.A. § 4424.

Another tool available to municipalities is the authority to levy **impact fees** under 24 V.S.A. § 5202. An impact fee (defined in 24 V.S.A. § 5201(3)) may be issued only as a condition of a land use permit. An example is to assess a fee to cover the cost of an extended sewer line to serve a new subdivision. The developer of the subdivision will benefit from the sewer system, which is a capital project. Thus, the municipality may make it a condition of the permit that the developer pay for all or a part of the sewer extension. A municipality may levy impact fees only if it has been confirmed by the regional commission under 24 V.S.A. § 4350 and developed a reasonable formula to assess the impact fee.

The statute requires a formula based on square footage, number of bedrooms or "a standard adopted as part of a town plan or capital budget." 24 V.S.A. § 5203(a). An impact fee may be assessed only for the capital project and not for operation, administration or maintenance of a capital project. It may be assessed on a developer for the entire cost of a capital project that will initially be used only by the beneficiaries of the development. However, if the project will be used in the future by beneficiaries of other future development, then the formula established for payment of impact fees (or a separate formula) shall include a requirement that the future beneficiaries pay an impact fee to the owners of the development on which the impact fee has already been levied.

A municipality may, under statute, exempt certain types of development from some or all of a fee assessed if the exemption achieves other policies or objectives clearly stated in a municipal plan, such as affordable housing. However, extreme care should be taken to craft an ordinance or bylaw that is not discriminatory. Professional assistance may be advisable in developing any exemptions to an impact fee ordinance.

3. **Process**. Bylaws and amendments are typically drafted by the planning commission and are adopted in a manner consistent with state law. This process includes the preparation and approval of a written report on the proposal. The report must include findings regarding the

proposal's advancement of the goals of the municipal plan, its compatibility with proposed uses and densities and how it carries out specific proposals for any planned community facilities. This report is important because it demonstrates the required conformance between the plan and proposed bylaw. A copy of the proposed bylaw and the report must be delivered to the planning commission chair of each adjoining municipality, the executive director of the regional planning commission, and to the Vermont Department of Housing and Community Affairs at least 15 days prior to the first hearing.

After holding at least one hearing on the proposed bylaw, the bylaw is forwarded to the selectboard for further review and adoption. It then becomes the legislative body's role to hold at least one public hearing on the proposed plan or amendment. The legislative body has the authority to make changes to the proposal, but may only make "minor" changes in the 14 days preceding the final public hearing. (Note that the term "minor" is not defined.) Any time the legislative body makes "substantial" (another undefined term) changes in the proposal, it must hold a new public hearing on the proposal. A copy of the changed proposal must also be filed with the clerk of the municipality and with the planning commission, which is then charged with amending its final report to the legislative body concerning the proposal's conformance with the municipal plan.

After the final public hearing, the legislative body may adopt the bylaw at a meeting. It takes effect 21 days after adoption, unless the electorate files a petition for an Australian ballot vote within 20 days. As an alternative to adoption by the legislative body, the legislative body or the electorate may vote to adopt bylaws via Australian ballot. The complete bylaw adoption process is described in 24 V.S.A. §§ 4441,4442.

For more information on town plan and bylaw adoption tools, and for other documents addressing land use planning in Vermont – including *Essentials of Local Land Use Planning and Regulations* and *Implementation Manual*, published by the Vermont Land Use and Education Collaborative – please go to www.vpic.info.

4. **Appeals of Local Land Use Decisions.** An appeal of a local land use decision can go all the way to the Vermont Supreme Court. There are two possible appeal processes at the local level: the appeal of the administrative officer's decision and the appeal of an appropriate municipal panel's decision.

   Virtually any act of the administrative officer is appealable, including decisions to refer an application to a particular board, a decision that a proposed land development activity does not require a permit, or a decision not to act on a violation. When someone appeals an act of the administrative officer, the appropriate municipal panel must schedule a hearing within 60 days of the filing of the notice of appeal. 24 V.S.A. § 4468. As part of the hearing, the appropriate municipal panel must determine if the appellant is an "interested person." 24 V.S.A. § 4465(b).

   Appeals of a decision of an appropriate municipal panel are taken to the Environmental Court, a trial-level court that has many of the same powers as a county superior court. Depending on the community's bylaws, Environmental Court appeals may be heard as if there were no proceeding at the municipal level; this is called a *de novo* appeal. The parties are entitled to present entirely new evidence, and the court makes a decision as if the appropriate municipal panel had never considered the case. 24 V.S.A. § 4472(a).

If the municipality has adopted "on the record" review, the Environmental Court only examines whether the appropriate municipal panel misinterpreted the bylaw or state law. The court does not hold any new factual hearings, and any questions as to the facts will be resolved by looking at the record developed by the appropriate municipal panel. A basic requirement is an audio recording or true record of the proceeding. 24 V.S.A. § 1205(c).

There is no obligation for municipalities to participate in an Environmental Court proceeding where a decision of an appropriate municipal panel has been appealed. Municipalities may choose to participate in Environmental Court proceedings to defend the local decision, or may allow the applicant and any interested persons to participate. As discussed below, there are limited circumstances when the legislative body has standing to appeal a decision of an AMP.

The Environmental Court is increasingly turning to mediation to resolve cases. Parties to a local proceeding (including the municipality) may wish to consider involving a mediator in order to resolve local land use disputes. For more information on mediation, contact the Environmental Court or the Department of Housing and Community Affairs.

When an administrative officer's decision is appealed, the AMP hears the appeal. The legislative body's role is minimal at this point, and primarily focuses on clarifying expectations for all involved, including the municipal attorney. The legislative body may have to coordinate with the municipal attorney to clarify who the client is and define the scope of the attorney's services.

When a case is appealed from the appropriate municipal panel to the Environmental Court, the AMP's role ends. It has no authority to appeal, to participate in an appeal or to represent the municipality. However, the legislative body may appeal a decision of the appropriate municipal panel if "the plan or bylaw is at issue." 24 V.S.A. § 4465(b)(2). While this statute may seem to grant broad authority to participate, case law has limited that right to those cases where the legislative body believes there has been an illegal or unconstitutional interpretation of a bylaw. *In re 232511 Investments, Ltd*., 2006 VT 27. Nevertheless, a legislative body may participate in an appeal that has been initiated by another appellant.

APPENDIX 1
THE VERMONT OPEN MEETING LAW

1 V.S.A. § 310. Definitions

As used in this subchapter:

(1) "Deliberations" means weighing, examining and discussing the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.

(2) "Meeting" means a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action.

(3) "Public body" means any board, council or commission of the state or one or more of its political subdivisions, any board, council or commission of any agency, authority or instrumentality of the state or one or more of its political subdivisions, or any committee of any of the foregoing boards, councils or commissions, except that "public body" does not include councils or similar groups established by the governor for the sole purpose of advising the governor with respect to policy.

(4) "Publicly announced" means that notice is given to an editor, publisher or news director of a newspaper or radio station serving the area of the state in which the public body has jurisdiction, and to any editor, publisher or news director who has requested under section 312(c)(5) of this title to be notified of special meetings.

(5) "Quasi-judicial proceeding" means a proceeding which is:

(A) a contested case under the Vermont Administrative Procedure Act; or

(B) a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunity to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, and the result of which is appealable by a party to a higher authority.

1 V.S.A. § 311. Declaration of public policy; short title

(a) In enacting this subchapter, the Legislature finds and declares that public commissions, boards and councils and other public agencies in this state exist to aid in the conduct of the people's business and are accountable to them pursuant to Chapter I, Article VI of the Vermont constitution.

(b) This subchapter may be known and cited as the Vermont open meeting law.

1 V.S.A. § 312. Right to attend meetings of public agencies

(a) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under section 313(a)(2) of this title. A meeting may be conducted by audio conference or other electronic means, as long as the provisions of this subchapter are met. A public body shall record by audio tape, all hearings held to provide a forum for public comment on a

proposed rule, pursuant to section 840 of Title 3. The public shall have access to copies of such tapes as described in section 316 of this title.

(b) (1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Minutes shall include at least the following minimal information:

(A) All members of the public body present;

(B) All other active participants in the meeting;

(C) All motions, proposals and resolutions made, offered and considered, and what disposition is made of same; and

(D) The results of any votes, with a record of the individual vote of each member if a roll call is taken.

(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five days from the date of any meeting.

(c) (1) The time and place of all regular meetings subject to this section shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution or other determining authority of the public body and this information shall be available to any person upon request.

(2) The time, place and purpose of a special meeting subject to this section shall be publicly announced at least 24 hours before the meeting. Municipal public bodies shall post notices of special meetings in or near the municipal clerk's office and in at least two other public places in the municipality, at least 24 hours before the meeting. In addition, notice shall be given, either orally or in writing, to each member of the public body at least 24 hours before the meeting, except that a member may waive notice of a special meeting.

(3) Emergency meetings may be held without public announcement, without posting of notices and without 24-hour notice to members, provided some public notice thereof is given as soon as possible before any such meeting. Emergency meetings may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body.

(4) Any adjourned meeting shall be considered a new meeting, unless the time and place for the adjourned meeting is announced before the meeting adjourns.

(5) An editor, publisher or news director of any newspaper, radio station or television station serving the area of the state in which the public body has jurisdiction may request in writing that a public body notify the editor, publisher or news director of special meetings of the public body. The request shall apply only to the calendar year in which it is made, unless made in December, in which case it shall apply also to the following year.

(d) The agenda for a regular or special meeting shall be made available to the news media or concerned persons prior to the meeting upon specific request.

(e) Nothing in this section or in section 313 of this title shall be construed as extending to the judicial branch of the government of Vermont or of any part of the same or to the public service board; nor shall it extend to the deliberations of any public body in connection with a quasi-judicial proceeding; nor shall anything in this section be construed to require the making public

of any proceedings, records, or acts which are specifically made confidential by the laws of the United States of America or of this state.

(f) A written decision issued by a public body in connection with a quasi-judicial proceeding need not be adopted at an open meeting if the decision will be a public record.

(g) The provisions of this subchapter shall not apply to site inspections for the purpose of assessing damage or making tax assessments or abatements, clerical work, or work assignments of staff or other personnel. Routine day-to-day administrative matters that do not require action by the public body, may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered.

(h) At an open meeting the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting as long as order is maintained. Public comment shall be subject to reasonable rules established by the chairperson. This subsection shall not apply to quasi-judicial proceedings.

(i) Nothing in this section shall be construed to prohibit the parole board from meeting at correctional facilities with attendance at the meeting subject to rules regarding access and security established by the superintendent of the facility.

1 V.S.A. § 313. Executive sessions

(a) No public body described in section 312 of this title may hold an executive session from which the public is excluded, except by the affirmative vote of two-thirds of its members present in the case of any public body of state government or of a majority of its members present in the case of any public body of a municipality or other political subdivision. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session except actions relating to the securing of real estate options under subdivision (2) of this subsection. Minutes of an executive session need not be taken, but if they are, shall not be made public subject to subsection 312(b) of this title. A public body may not hold an executive session except to consider one or more of the following:

(1) Contracts, labor relations agreements with employees, arbitration, mediation, grievances, civil actions, or prosecutions by the state, where premature general public knowledge would clearly place the state, municipality, other public body, or person involved at a substantial disadvantage;

(2) The negotiating or securing of real estate purchase options;

(3) The appointment or employment or evaluation of a public officer or employee;

(4) A disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;

(5) A clear and imminent peril to the public safety;

(6) Discussion or consideration of records or documents excepted from the access to public records provisions of section 317(b) of this title. Discussion or consideration of the excepted

record or document shall not itself permit an extension of the executive session to the general subject to which the record or document pertains;

(7) The academic records or suspension or discipline of students;

(8) Testimony from a person in a parole proceeding conducted by the parole board if public disclosure of the identity of the person could result in physical or other harm to the person;

(9) Information relating to a pharmaceutical rebate or to supplemental rebate agreements, which is protected from disclosure by federal law or the terms and conditions required by the Centers for Medicare and Medicaid Services as a condition of rebate authorization under the Medicaid program, considered pursuant to 33 V.S.A. §§ 1998(f)(2) and 2002(c).

(b) Attendance in executive session shall be limited to members of the public body, and, in the discretion of the public body, its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed.

(c) The senate and house of representatives, in exercising the power to make their own rules conferred by Chapter II of the Vermont Constitution, shall be governed by the provisions of this section in regulating the admission of the public as provided in Chapter II, section 8 of the Constitution.

1 V.S.A. § 314. Penalty and enforcement

(a) A person who is a member of a public body and who knowingly and intentionally violates the provisions of this subchapter or who knowingly and intentionally participates in the wrongful exclusion of any person or persons from any meeting for which provision is herein made, shall be guilty of a misdemeanor and shall be fined not more than $500.00.

(b) The attorney general or any person aggrieved by a violation of the provisions of this subchapter may apply to the superior court in the county in which the violation has taken place for appropriate injunctive relief or for a declaratory judgment. Except as to cases the court considers of greater importance, proceedings before the superior court, as authorized by this section and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

APPENDIX 2
A BRIEF OVERVIEW OF SELECTED VERMONT TOWN OFFICES

Vermont Town Government. Vermont's 237 organized towns and 9 cities, as well as its incorporated villages, are "creatures of the State" under the terms of the Vermont Constitution. Because Vermont is not a "home rule" state, a municipality can do only those things that the Legislature allows. The Legislature has enacted laws enabling or mandating municipalities to undertake certain responsibilities through statutes – mostly in Titles 24, 32 and 19, but also scattered throughout all Titles of the Vermont statutes.

Generally, towns have the power and responsibility to build and maintain highways and bridges, tax property, control animals, license junkyards, provide for solid waste disposal, keep land and vital records, and regulate some health and sanitation areas.

Additionally, if at town meeting the voters so decide, a town may provide services such as police protection, fire protection, ambulance service, water, sewer, electricity, cemeteries, planning and zoning, building and housing codes, recreation, parks, forests and libraries.

Cities, as well as 22 towns and some other municipalities, all have charters that specifically grant them powers in addition to those in general statute. Villages are usually built-up areas wholly within towns with powers similar to towns. Villages often provide some "urban" services within their small areas that the town is not willing to provide (e.g., water, sewer, police or street lighting).

In addition to towns, cities and villages, there are several other municipal corporations, including solid waste, school and fire districts. Each is a government separate from the town. A fire district may be created to provide services, similar to those of a village, to a limited area within a town.

In most instances, the Legislature has indicated which town officer or body has responsibility to provide particular municipal services. Vermont courts have determined that when authority is provided by the Legislature to a town office, other town offices — even town meeting — may not direct the actions of that town office. The following sections *briefly* highlight many of these offices and their duties. The reader is strongly urged to read the statutes and Vermont League of Cities and Towns' (VLCT's) in-depth handbooks prior to undertaking the responsibilities of a position described herein.

Town Meeting. Town meeting is the one occasion during the year when voters come together to chart their town's future for the coming year. Most, but not all, annual town meetings are held the first Tuesday in March. At town meeting voters *must*:

- Elect municipal officers. 17 V.S.A. § 2646.
- Decide whether additional offices will be filled by election. 17 V.S.A. §§ 2646, 2649, 2650, 2651.
- Approve municipal budgets. 17 V.S.A. § 2664.
- Approve long-term capital borrowing or bonding by the town. 24 V.S.A. §§ 1751-1788.

At town meeting voters *may*:

- Fill vacancies in elective offices. 24 V.S.A. § 962.

- Approve zoning bylaws. 24 V.S.A. § 4385.
- Override ordinances approved by the selectboard. 24 V.S.A. § 1973.
- Approve charter changes, subject to legislative approval. 17 V.S.A. § 2645.

Voters at town meeting have several responsibilities in addition to those listed above. Town meeting is also a good time to catch up on a town's priorities, meet neighbors, hear about roads and legislation, etc.

At town meeting voters *may not*:

- Take action on an improperly warned article or any unwarned matter.
- Do things that are the responsibility of specific town officers (voters may advise town officers, but the officers do not have to take the advice).
- Instruct town officers how to do their jobs.
- Remove officers.
- Conduct business which is not proper and appropriate, or which is useless, frivolous or unlawful.

See VLCT's *Vermont Town Meeting Handbook* for further details.

Moderator. The moderator is the presiding officer of municipal meetings and must decide questions of votes taken, except if Australian ballot is used. The moderator must preserve order in the conduct of business and meetings. *Robert's Rules of Order* or some other rules of order govern all municipal meetings, except in elections using the Australian ballot system. 17 V.S.A. §§ 2657-2659. See VLCT's *Handbook for Vermont Moderators*.

Selectpersons. Either three or five selectpersons serve overlapping terms of between one and three years. One of three is elected to a three-year term each year. 17 V.S.A. § 2646(4). A town may vote to add two more selectpersons (for a total of five), each serving one- or two-year terms. 17 V.S.A. § 2650.

Selectpersons are responsible for general supervision of the affairs of town and must cause to be performed all duties required of the town not committed by law to the care of any particular officer. 24 V.S.A. § 872.

The selectboard may enact ordinances and rules, 24 V.S.A. § 1972, in many areas including traffic regulation, regulating nuisances, managing solid waste, dogs and recreation, and establishing bike paths. 24 V.S.A. § 2291. Many of these are listed in 24 V.S.A. § 2291, but others are scattered throughout the statutes.

The selectboard warns all town meetings and specifies business to be conducted at the meeting, including proposing an annual budget. 17 V.S.A. §§ 2641, 2642, 2663, 2664. If the town does not set the tax rate, the selectboard must set a tax rate that will raise the specific amount voted at town meeting. 17 V.S.A. § 2664.

The selectboard is responsible for hiring, directing, and firing almost all town employees, 24 V.S.A. § 872, *unless the town has a town manager form of government*; for setting salaries if voters do not do so at town meeting, 24 V.S.A. §§ 932-933, and for establishing and enforcing personnel policies, 24 V.S.A. §§ 1121-1122.

The selectboard must authorize all town expenditures by signing orders for the treasurer to draw town funds. 24 V.S.A. §§ 1621-1623.

The selectboard supervises the expenditure of the highway fund and has charge of keeping town highways in repair. 19 V.S.A. §§ 301-306. It also is responsible for laying out, classifying and discontinuing town roads. 19 V.S.A. Chapters 7 and 9.

The selectboard is responsible for animal control. 20 V.S.A. Chapters 191, 193, 194.

The selectboard may borrow money for periods of less than a year in anticipation of taxes. 24 V.S.A. § 1786.

The selectboard must fill all town vacancies until an election is held. 24 V.S.A. § 963.

The selectboard may license many operations within the town (e.g., liquor sales, restaurants, junkyards and entertainment).

The selectboard appoints several minor town offices (e.g., fence viewers, pound keepers, inspector of lumber and tree warden). 24 V.S.A. § 871.

The selectboard appoints and removes planning commissioners unless the town has voted to elect them. 24 V.S.A. § 4323. In rural towns, selectpersons serve as ex officio planning commission members. 24 V.S.A. § 4322. A rural town is a town with a population of less than 2,500 or a town with a population of at least 2,500 but less than 5,000 which has voted by Australian ballot to be considered a rural town. 24 V.S.A. § 4303(25). The selectboard adopts the town plan unless the town votes to adopt it by Australian ballot. 24 V.S.A. § 4385. It also holds public hearings on proposed zoning bylaws, 24 V.S.A. § 4442, and may, in some circumstances, adopt zoning bylaws. 24 V.S.A. § 4442.

The selectboard appoints police officers and *municipal* fire department officers. 24 V.S.A. §§ 1931, 1953.

The selectboard appoints and may remove a town manager when a town has voted to adopt such form of government. 24 V.S.A. §§ 1232-1233.

The selectboard purchases all insurance for the town. 24 V.S.A. § 1092.

The selectboard requires certain town officers to obtain a bond and sets the amount necessary. 24 V.S.A. § 832.

The selectboard regulates and issues certificates for junkyards. 24 V.S.A. §§ 2241-2242.

The selectboard controls cemeteries if there is not a cemetery commission. 18 V.S.A. §§ 5367, 5381.

Selectboard members serve as members of the Board of Civil Authority. 24 V.S.A. § 801.

Town Clerk. The town clerk is elected for either a one-year or, if the town so votes, a three-year term. 17 V.S.A. § 2646(2).

The clerk also serves as school district clerk unless the district has voted otherwise. 16 V.S.A. § 425.

The town clerk:

- Administers oaths of office and the voter's oath, 24 V.S.A. §§ 1160, 17 V.S.A. § 2124, and is automatically an ex officio notary public. 24 V.S.A. § 441.
- Records all proceedings of town meetings. 24 V.S.A. § 1152.
- Issues various licenses including marriage and dog licenses, and fish and game licenses, among others, and may register vehicles. 18 V.S.A. § 5131, 20 V.S.A. § 3581(a), 10 V.S.A. § 4254, 23 V.S.A. § 6.
- Records all land records, including deeds; liens; restrictions on deeds; hazardous waste site information and storage and disposal certifications; underground storage tank information; and local permits attached to real property. 24 V.S.A. §§ 1153–1164.
- Records all vital records (deaths, births and marriages). 18 V.S.A. §§ 5007-5013.
- Serves as presiding officer of all elections *except* non-Australian ballot town meetings unless the municipality by vote or charter provides otherwise, 17 V.S.A. §§ 2452, 2680, and has many other election and town meeting responsibilities. See Title 17 generally.
- Works with the listers on setting the grand list and on tax appeals See Title 32 generally.

Clerks have many additional responsibilities scattered throughout the statutes. See VLCT's *Handbook for Vermont Municipal Clerks* for further detail.

Town Treasurer. The town treasurer is elected for either a one-year or, if the town so votes, a three-year term. 17 V.S.A. § 2646(3). Approximately 180 treasurers are also the clerks for their municipalities.

The treasurer also serves as school district treasurer unless the district has voted otherwise. 16 V.S.A. § 426.

The town may vote to have the treasurer collect current taxes. 32 V.S.A. § 4791. Whether or not the treasurer actually collects the taxes, when the bills are prepared, the treasurer credits the general, highway and school funds, 24 V.S.A. § 1524, and debits the general funds as taxes are received. 24 V.S.A. § 1526. Current taxes include all municipal taxes and, under Act 60, non-residential school property taxes.

The treasurer keeps accounts of the money, bonds, notes and evidences of debt paid or delivered to him or her and of all monies paid out. 24 V.S.A. § 1571.

The treasurer also must pay all orders (warrants) drawn by the selectboard and shall keep records thereof. 24 V.S.A. § 1576.

The treasurer must work closely with both the selectboard (which has the authority to draw orders or warrants, borrow in anticipation of taxes, develop the budget and make investment decisions) and with the auditors (who will annually review the finances of the town and report to the voters on the financial status of the town). The statutes in this area are vague and archaic, and have caused more than one confrontation among the selectboard, treasurer and auditors about their proper roles.

Tax Collector. Tax collection statutes are complex. People engaged in tax collection should carefully read the statutes before commencing their responsibilities. At town meeting, a town must choose one of the following five procedures to collect taxes:

- The town may vote to elect a tax collector who would collect both current and delinquent taxes. 17 V.S.A. § 2646(8 and 9); 24 V.S.A. § 1528.
- By not indicating how the town wishes taxes collected, the first constable automatically becomes the collector of taxes. 24 V.S.A. § 1529.
- The town may vote to have the treasurer collect taxes. 32 V.S.A. § 4791. The town may also vote to have delinquent taxes collected by the collector of taxes, by the collector of delinquent taxes, or by the constable (if neither collector is elected). 24 V.S.A. § 1529.
- If the town has adopted the town manager form of government, it can also vote to have the manager collect taxes (but only delinquent taxes if the town has voted to have the treasurer receive current taxes). 24 V.S.A. § 1236(10).
- If the town is without a tax collector, the selectboard can hire one (even a non-resident) to collect what the treasurer does not. 32 V.S.A. § 4799.

The town may set the date that taxes are due (32 V.S.A. § 4773), may vote to have them paid in installments (32 V.S.A. §§ 4871-4872), and may vote whether to allow discounts for early payment (32 V.S.A. §§ 4773, 4872). If the town does not establish a due date, the date is established according to the following:

- If the *treasurer* collects current taxes, the treasurer must post and publish notices and set a date not less than 30 days from the notice being mailed as the date taxes are due, and mail tax bills to each taxpayer. 32 V.S.A. § 4792. Taxes go delinquent the day after the date established for payment, and the warrant for collection of delinquent taxes is turned over to the delinquent tax collector. 32 V.S.A. § 4793.
- If a tax collector collects current taxes, he or she must give notice of at least 30 days as to when and where taxes can be paid and must mail tax bills to each taxpayer. 32 V.S.A. § 4772. Taxes are delinquent the day after the date established for payment of taxes or 30 days from the date of mailing the notice if no date was established.

Once taxes are delinquent, the collector may charge 8% commission, or such lesser amount as set by the voters. 32 V.S.A. § 1674. The town may also vote to charge interest on delinquent taxes at a rate of up to 1% per month for the first three months and 1½% thereafter. 32 V.S.A. § 5136.

Collectors of delinquent taxes have three options when delinquent taxpayers own property:

1. Distrain the property of the owner and sell it at public auction (32 V.S.A. §§ 5191-5193) after properly attaching a tax lien in the case of personal property. 32 V.S.A. §§ 5061-5079.
2. Bring suit in court against the property holder to recover the tax and costs (32 V.S.A. §§ 5221-5227); or
3. Sell the real estate against which the tax was applied (32 V.S.A. §§ 5251-5263).

These are complicated processes that must be followed correctly and legally. *A lawyer should be consulted when initiating any of the above proceedings.*

Rules of thumb to follow are:

- There is an automatic tax lien on real estate as soon as the grand list is lodged in the town clerk's office;
- Taxes "run" with the property. If the property is sold with taxes outstanding, the property is still subject to the lien and tax sale – meaning it is up to the new owner to assure the taxes are paid or risk tax sale or foreclosure;
- Acceptance of full or partial payment of overdue taxes does not preclude the town from collecting the remaining balance of taxes, and any interest or penalties thereon;
- Once a tax bill or warrant is issued, it must be either paid in full or fully abated or some combination thereof. The criteria for abatement are very limited. See 24 V.S.A. § 1535. A town cannot "write-off" delinquent taxes – they must either be paid or abated.

For further information, consult VLCT's *Handbook for Delinquent Tax Collectors*.

Listers. Listers are responsible for determining the value of the real and personal property in town. This is the value the selectboard or the town will use to set a tax rate necessary to raise the money to operate the town in the next year. It is also the basis for the determination of the property wealth of the municipality for purposes of setting state education property taxes. Three listers are elected, one a year, to overlapping three-year terms. 17 V.S.A. §§ 2646(5), 2649. A town may vote to elect up to two additional listers. 17 V.S.A. § 2649.

The statutes give very little guidance to listers other than stating that they should, on April 1 of every year, determine the "fair market value" of the personal and real property and set it in the grand list book at 1% of that value. 32 V.S.A. § 3482. Agricultural and forest land enrolled in the Use Value Program is assessed differently.

One section of the statutes and several court cases give some guidance in determining the appraisal value of a property. It is the price the property would bring in the market when offered for sale and purchased by another, taking into consideration (1) the availability of the property; (2) its potential and prospective use; (3) any functional deficiencies; (4) its age and condition; and (5) the effect of any state or local law or regulation affecting the use of the land (such as zoning). 32 V.S.A. § 3481. This is called Fair Market Value.

Personal property valuation is based on inventory forms sent to taxpayers. Business personal property is no longer taxable for school purposes, and municipalities may vote to repeal that tax on the municipal side in order to maintain consistency with the school tax side. 32 V.S.A. §§ 4001-4009.

Whenever listers alter a valuation, they must notify the affected taxpayer of the changes and of his or her right to a hearing to appeal the listers' initial decision. 32 V.S.A. §§ 4111, 4221.

Listers may, with the approval of the selectboard, or by vote of the town, employ expert assistance (and many do when reappraising properties). 32 V.S.A. § 4041.

For further information, see the *Lister's Handbook*, published by the state Division of Property Valuation and Review.

Auditors. Town auditors have two primary duties. The first is to "examine and adjust the accounts of all town and town school district officers and all other persons authorized by law to draw orders on the town treasurer." The second is to "report their findings in writing and to cause the same to be mailed or otherwise distributed to the legal voters of the town …." 24 V.S.A. §§ 1681, 1684. Details on the accounts to be audited, the auditors' report, the timing of auditors' meetings, and the notice required for meetings are included in the above-cited statutes. Three auditors are elected, one a year, to overlapping three-year terms. 17 V.S.A. §§ 2646(6), 2649.

The relationship between the town treasurer and the auditors is at times of concern to those holding either office. The treasurer is responsible for the accounting system, a part of which is the preparation of financial statements. What happens when the auditors disagree with these statements? Auditors should discuss their concerns with the treasurer and attempt to work out a presentation that is acceptable to both. If this cannot be done, the treasurer's statements are those included in the town's annual report. The auditors would then want to note in their own written report the areas of disagreement with the treasurer's report.

After completing their review of the town's books and financial statements, the auditors prepare an audit report. According to the statutes 24 V.S.A. §§ 1683-1684, the auditors' report must contain the following:

- a detailed statement of the financial condition of the town and school district for their respective fiscal years;
- a classified summary of receipts and expenditures;
- a list of all outstanding payables more than 30 days past due;
- a report of deficit, if any;
- a statement on the condition of all trust funds, including a list of assets of such funds and an account of receipts and disbursements for the previous year;
- a statement showing what bonds – including rate and amount thereof – of the town or town school district are outstanding; and
- a statement showing what interest bearing notes or orders of the town or school district are outstanding with the serial number, date, amount, payee, rate of interest of each, and the total amount thereof.

For further details, see VLCT's *Handbook for Locally Elected Auditors*.

Town Manager. Forty-eight towns, cities and villages have adopted the municipal manager system as set forth in 24 V.S.A. §§ 1231-1243 or comparable municipal charter provision. Each one has slightly different duties and responsibilities tailored to his or her community, and each does the job differently.

In order to adopt the town manager form of government, a town must vote at town meeting on a specific article to do such. 24 V.S.A. §§ 1240-1243.

The selectboard appoints, directs, supervises, sets the salary for and, for cause, removes the town manager. 24 V.S.A. §§ 1232, 1233, 1239.

A manager's duties include:

- Having general supervision of the town;
- Being the administrative head of all departments;
- Performing all duties not committed to another office;
- Performing all selectpersons' duties *except* preparing tax bills, signing orders, calling town meetings, laying out highway or parks, making assessments, awarding damages, being a member of the Board of Civil Authority, and filling vacancies (but the manager shall assist the selectboard in these duties);
- Being the general purchasing agent;
- Having charge of all town buildings including school buildings upon requisition of the board of school directors;
- Acting as the road commissioner (automatic – no other commissioner can be appointed or elected);
- Doing town accounting, including school district accounting when the board of school directors so requests;
- Having charge of the police and fire departments (including appointments, removals and salaries);
- Acting as collector of taxes if the town so votes. 24 V.S.A. § 1236;
- Having charge of the system of licenses (other than those issued by the town clerk);
- Having charge of the system of sewers;
- Having charge of street lighting; and
- Having charge of the maintenance of parks.

Board of School Directors. Schools and school boards are governmental entities separate from cities, towns and villages. Town school districts have school boards of three or five members, three of whom are elected for three years and two of whom are elected for either one or two years. Union school districts are not discussed here. As part of its duties, the local board of school directors:

- Select – as members of a supervisory union board – a superintendent for a period of one to five years and fix his or her salary. 16 V.S.A. § 241(a).
- Enter into contracts with supervisory unions for joint services. 16 V.S.A. § 267.
- Warn the town school district meeting. 16 V.S.A. § 422(c).
- Determine educational policies of the school district, care for and manage school property, keep schoolhouses repaired and insured, receive gifts of money or other items of value for school purposes, examine claims against the town district for school expenses, draw orders for loans to the town's general fund, make regulations not inconsistent with law to carry their powers into effect. 16 V.S.A. § 563.
- Determine the number and locations of schools subject to approval by voters under certain circumstances. 16 V.S.A. § 563.
- Report to the state and to the town school district regarding expenditures, and recommend a budget for adoption by the district. 16 V.S.A. §§ 428, 563.

- Appoint, annually, one or more truant officers. 16 V.S.A. § 1125.
- Maintain a high school or furnish secondary education through tuition, subject to appeal to the State Board of Education. 16 V.S.A. § 821.
- Provide a competent number of elementary schools or arrange for elementary tuition. 16 V.S.A. § 821.
- Fix the number of hours that shall constitute a school day subject to revision by the State Board of Education; petition the State Board of Education for waiver of the number of school days required. 16 V.S.A. § 1071.
- Determine the legal residence of pupils, subject to appeal to the Commissioner of Education. 16 V.S.A. §§ 1075.
- Receive non-resident pupils and payment therefore. 16 V.S.A. § 1093.
- Notify school directors of towns from which non-resident pupils come of any proposed tuition increase on or before February 1 in any year. 16 V.S.A. § 826.
- Give consent to the superintendent to excuse a pupil from school who has reached the age of 15 years, under certain circumstances. 16 V.S.A. § 1123.
- Excuse a child over 16 years of age from attending public school, under certain circumstances. 16 V.S.A. § 1122.
- Establish policy related to student discipline. 16 V.S.A. § 1161a.
- Give consent to the dismissal from school of pupils, under certain circumstances. 16 V.S.A. § 1162.
- Control and regulate the transportation and board of pupils in schools under its charge. 16 V.S.A. § 1221.
- Furnish transportation as within its discretion appears necessary. 16 V.S.A. § 1222.
- Appoint one or more medical inspectors for the schools in the town district. 16 V.S.A. § 1382.
- Provide certain health and nutrition services for children of indigent parents. 16 V.S.A. § 1386.
- Enter into contracts with teachers. 16 V.S.A. § 1751.
- Hear appeals of teachers suspended by a superintendent, and if no appeal is taken, affirm or reverse the suspension of a teacher by a superintendent. 16 V.S.A. § 1752.
- Control and manage revenue from grammar school lands in certain circumstances. 16 V.S.A. § 3226.
- Provide, furnish, maintain and control schoolhouses or sell schools and sites when authorized by voters. 16 V.S.A. § 563.
- Erect on each schoolhouse or adjacent thereto a flagpole and fly a United States flag thereon while school is in session. 16 V.S.A. § 3742.
- Select and provide all textbooks, appliances and supplies required for use in the schools, subject to the approval of the superintendent. 16 V.S.A. § 563(14).

The board of school directors *may*:

- Vote to establish central supervisory union financial management as well as transportation, construction, teacher negotiations or other services. 16 V.S.A. § 261(a).

- Organize and supervise safety patrols. 16 V.S.A. § 1482.
- Initiate eminent domain proceedings 16 V.S.A. § 560.

The board of school directors may provide early education programs as well as instruction to pupils who have completed secondary education. It may also discontinue or relocate use of facilities. See the Vermont School Boards Association's *Handbook for New and Not So New School Board Members* for more information.

Constable. Unless it has voted to appoint a constable, the town must elect a first constable and may vote to elect a second constable. 17 V.S.A. §§ 2646(7), 2651a. The constable is a law enforcement officer, as defined by § 54(c)(6) of the Vermont Rules of Criminal Procedure, and as such has the authority to arrest, and has powers of search and seizure within the town. 24 V.S.A. § 1931. A constable may also serve criminal or civil process. 12 V.S.A. § 691. He or she may:

- Destroy unlicensed dogs, following the requirements of 20 V.S.A. §§ 3621-3623.
- Kill injured deer. 10 V.S.A. § 4749.
- Assist the health officer in the discharge of his or her duties. 18 V.S.A. § 617.
- Serve as a district court officer. 24 V.S.A. § 296.
- Remove disorderly persons from town meeting. 17 V.S.A. § 2659.

When no tax collector is elected, the first constable becomes the collector of state, county, town and town school district taxes. 24 V.S.A. § 1529.

Vermont law requires a basic training course of a minimum of forty-five hours for a part-time law enforcement officer. The definition of "part-time law enforcement officer" specifically includes "a constable who exercises law enforcement powers." 20 V.S.A. § 2358. However, section (d) of that section states that the basic training is optional for any elected official. Notwithstanding these sections of Title 20 of the statutes, a town may vote (a) to prohibit constables from exercising any law enforcement authority or (b) to prohibit constables from exercising any law enforcement authority without having successfully completed a course of training under Chapter 151 of Title 20. 24 V.S.A. § 1936a. The jurisdiction of a constable is limited to the boundaries of his or her town or city.

Tree Warden. The selectboard shall appoint a tree warden from among the legally qualified voters of the town. 24 V.S.A. § 871. The office of tree warden has been viewed as an archaic office, but is developing new relevance in the late twentieth century. Shade and ornamental trees within the limits of public rights of way are under the control of the tree warden. The tree warden may plan and implement a town shade tree preservation program for the purpose of shading and beautifying public ways and places by planting new trees and shrubs; by maintaining the health, appearance and safety of existing trees through feeding, pruning and protecting them from noxious insect pests and diseases; and by removing diseased, dying or dead trees which create a hazard to public safety or threaten the effectiveness of disease or insect control programs. 24 V.S.A. § 2502. A municipality may appropriate a sum of money to be expended by the tree warden or, if one is not appointed, by the selectboard. 24 V.S.A. § 2503.

The tree warden may not remove trees when the owner or lessee of abutting real estate annually controls all insect pests or tree diseases on trees within the limits of a highway or place abutting such real estate. The tree warden shall enforce all laws relating to public shade trees and may prescribe rules and regulations for the planting, protection, care and removal of public shade trees pursuant to the ordinance adoption procedure in 24 V.S.A. Chapter 59. The tree warden may enter into agreements with the owners of land adjoining or facing public ways and places for the purpose of encouraging and carrying out a community-wide shade tree planting and preservation program. Only the tree warden, deputy tree warden or someone with his or her permission may cut a public shade tree. Healthy public shade trees in the residential part of a residential neighborhood shall not be felled without a public hearing by the tree warden. The tree warden may request from the Commissioner of Agriculture recommendations for control of suspected infestations, may implement recommended control measures, and may enter private land to implement these control measures. 24 V.S.A. §§ 2504-2511.

Planning Commission. A planning commission may have not less than three nor more than nine voting members. At least a majority of the members must be residents of the municipality. The selectpersons of a "rural town" or two elected or appointed officials of an "urban municipality" shall be non-voting ex officio members. An energy coordinator may also be a non-voting ex officio member. 24 V.S.A. § 4322. Planning commissioners are appointed by the selectboard unless the municipality votes to elect them to terms of between one and four years. 24 V.S.A. § 4323.

Following are the powers and duties of planning commissions as specified in 24 V.S.A. § 4325. Any planning commission created under 24 V.S.A. Chapter 117 may:

1. Prepare a municipal plan and amendments thereof for consideration by the legislative body and review amendments thereof initiated by others as set forth in 24 V.S.A. Chapter 117, Subchapter 5.
2. Prepare and present to the legislative body proposed bylaws and make recommendations to the legislative body on proposed amendments to such bylaws as set forth in 24 V.S.A. Chapter 117, Subchapter 6.
3. Administer bylaws adopted under 24 V.S.A. Chapter 117, Subchapter 6, unless a development review board has been created.
4. Undertake studies and make recommendations on matters of land development, urban renewal, transportation, economic and social development, urban beautification and design improvements, historic and scenic preservation, the conservation of energy, the development of renewable energy resources and wetland protection.
5. Prepare and present to the legislative body recommended building, plumbing, fire, electrical, housing, and related codes and enforcement procedures, and construction specifications for streets and related public improvements.
6. Prepare and present a recommended capital budget and program for a period of five years for action by the legislative body.
7. Hold public meetings.
8. Require from other departments and agencies of the municipality such available information as relates to the work of the planning commission.

9. Enter upon land to make examinations and surveys in the performance of its functions.
10. Participate in a regional planning program.
11. Retain staff and consultant assistance in carrying out its duties and powers.
12. Undertake comprehensive planning, including related preliminary planning and engineering studies.
13. Perform such other acts or functions necessary or appropriate to fulfill the intent and purposes of 24 V.S.A. Chapter 117.

Every municipality may appropriate to and expend funds for its planning commission. The planning commission must keep a record of its business and shall make an annual report to the municipality. A planning commission may accept and utilize any funds, or any personal or other assistance made available by the state or federal government or any of their agencies or from private sources. 24 V.S.A. § 4326.

When a charter of a municipality sets forth requirements for the appointment and authority of municipal planning and zoning officials that are inconsistent with law, the charter shall prevail. 24 V.S.A. § 4328.

Zoning Board of Adjustment/Development Review Board. A municipality that has a municipal plan and zoning bylaws may choose to have *either* a development review board or a zoning board of adjustment. If a development review board is chosen, it exercises all the functions exercised by the zoning board of adjustment and development review functions otherwise exercised by the planning commission (such as approval, modification or disapproval of plats and their development).

The zoning board of adjustment or development review board may consist of the members of the planning commission or include one or more members of the planning commission. The legislative body must decide how many members, between five and nine, will be on the development review board or zoning board of adjustment. If the members of the planning commission are not also the zoning board of adjustment or development review board, the selectboard must appoint members. 24 V.S.A. § 4460.

The development review board or zoning board of adjustment hears appeals from decisions of the zoning administrator and grant or deny variances. 24 V.S.A. §§ 4460(e).

The development review board, but not a zoning board of adjustment, may take steps to enable it to hear applications for local Act 250 review of municipal impacts. If a development review board decides to hear such applications, then all applications would go through that process unless Act 250 had no jurisdiction. Act 250 criteria the development review board may consider are *impacts on educational and municipal services, and conformance with the town plan*. 24 V.S.A. § 4420.

Administrative Officer (Zoning). An administrative officer, sometimes called a zoning administrator or officer, is appointed by the legislative body, after nomination by the planning commission, for a term of three years promptly after the adoption of bylaws or when a vacancy occurs. 24 V.S.A. § 4448. The administrative officer should provide an interested party with all forms required to obtain any municipal land use permit. The administrative officer should also

coordinate efforts to provide an interested party with all other relevant permit information, such as state land use permits, and with informational resources, such as the regional planning commission. 24 V.S.A. § 4448(c). The administrative officer must strictly interpret the zoning bylaws, and no land development may commence without a permit issued by the administrative officer, who shall also be required to post the permit during the appeal period and deliver a copy to the listers. 24 V.S.A. §§ 4448-4449(a)(1). The administrative officer is also responsible for instituting enforcement action in the name of the municipality for violations of the bylaws. 24 V.S.A. § 4454.

Conservation Commission. A conservation commission may be created upon a vote of the town or upon a vote of the selectboard if the town charter so permits. Conservation commissions have between three and nine members who are appointed by the selectboard for four-year terms. The conservation commission may make an inventory and conduct studies of the municipal natural resources including air, surface waters, and ground waters and pollution thereof; soils and their capabilities; mineral and other earth resources; streams, lakes, ponds, wetlands and floodplains; unique or fragile biologic sites; scenic and recreational resources; plant and animal life; prime agricultural and forest land; and other open lands. It may also make inventories of other lands in which the municipality has an interest. The conservation commission may administer municipal lands acquired to protect one of the above attributes. The conservation commission may also advise the selectboard and the planning commission. 24 V.S.A. Chapter 118.

Open Meeting and Access to Public Records Laws. Every town officer should know the provisions of the Open Meeting Law (1 V.S.A. §§ 311-314), and the Access to Public Records Law (1 V.S.A. § 315-320). The general rule to apply is that all the business you conduct and all the records you have are the public's business, and every effort should be made to make meetings and documents available to the public.

There are several common sense exceptions to those rules (e.g., criminal investigations and personnel matters) that are spelled out in the Open Meeting and Access to Public Records Laws. For an outline of the requirements of these two laws, please see the VLCT *Open Meeting Law* and *Access to Public Records Law* posters available at your municipal clerk's office or from VLCT.

APPENDIX 3
PRINCIPAL SELECTBOARD STATUTES

24 V.S.A. § 2291. Enumeration of powers

For the purpose of promoting the public health, safety, welfare and convenience, a town, city or incorporated village shall have the following powers:

(1) To set off portions of public highways of the municipality for sidewalks and bicycle paths and to regulate their use.

(2) To provide for the removal of snow and ice from sidewalks by the owner, occupant or person having charge of abutting property.

(3) To provide for the location, protection, maintenance and removal of trees, plants and shrubs, and buildings or other structures on or above public highways, sidewalks, or other property of the municipality.

(4) To regulate the operation and use of vehicles of every kind including the power: to erect traffic signs and signals; to regulate the speed of vehicles subject to sections 1141 through 1147 of Title 23; to regulate or exclude the parking of all vehicles; and to provide for waiver of the right of appearance and arraignment in court by persons charged with parking violations by payment of specified fines within a stated period of time.

(5) To establish rules for pedestrian traffic on public highways and to establish crosswalks.

(6) To regulate the location, installation, maintenance, repair and removal of utility poles, wires and conduits, water pipes or mains, gas mains and sewers, upon, under or above public highways or public property of the municipality.

(7) To regulate or prohibit the erection, size, structure, contents and location of signs, posters or displays on or above any public highway, sidewalk, lane or alleyway of the municipality and to regulate the use, size, structure, contents and location of signs on private buildings or structures.

(8) To regulate or prohibit the use or discharge, but not possession of, firearms within the municipality or specified portions thereof.

(9) To license or regulate itinerant vendors, peddlers, door-to-door salesmen, and those selling goods, wares, merchandise or services who engage in a transient or temporary business, or who sell from an automobile, truck, wagon or other conveyance, excepting persons selling fruits, vegetables or other farm produce.

(10) To regulate the keeping of dogs, and to provide for their leashing, muzzling or restraint.

(11) To regulate, license, tax or prohibit circuses, carnivals and menageries, and all plays, concerts, entertainments or exhibitions of any kind for which money is received.

(12) To regulate or prohibit the storage or dumping of solid waste, as defined in 10 V.S.A. § 6602. These regulations may require the separation of specified components of the waste stream.

(13) To compel the cleaning or repair of any premises which in the judgment of the legislative body is dangerous to the health or safety of the public.

(14) To define what constitutes a public nuisance, and to provide procedures and take action for its abatement or removal as the public health, safety or welfare may require.

(15) To provide for penalties for violation of any ordinance or rule adopted under the authority of this section.

(16) To name and rename streets and to number and renumber lots pursuant to section 4421 of this title.

(17) To regulate or prohibit possession of open or unsealed containers of alcoholic beverages in public places.

(18) To regulate or prohibit consumption of alcoholic beverages in public places.

(19) To regulate the construction, alteration, development, and decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements where the city, town or village has not adopted zoning or where those activities are not regulated pursuant to a duly adopted zoning bylaw. Regulations regarding the decommissioning or dismantling of telecommunications facilities and ancillary structures may include requirements that bond be posted, or other security acceptable to the legislative body, in order to finance facility decommissioning or dismantling activities. These regulations are not intended to prohibit seamless coverage of wireless telecommunications services.

(20) To establish a conflict of interest policy to apply to all elected and appointed officials of the town, city, or incorporated village.

(21) To regulate, by means of a civil ordinance adopted pursuant to chapter 59 of this title, subject to the limitations of 13 V.S.A. § 351b and the requirement of 13 V.S.A. § 354(a), and consistent with the rules adopted by the secretary of agriculture, food and markets, pursuant to 13 V.S.A. § 352b(a), the welfare of animals in the municipality. Such ordinance may be enforced by humane officers as defined in 13 V.S.A. § 351, if authorized to do so by the municipality.

(22) To regulate the sale and conveyance of sewage capacity to users, including phasing provisions and other conditions based on the impact of residential, commercial, or industrial growth within a town, in accord with principles in a duly adopted town plan.

24 V.S.A. § 872. Selectmen; general powers and duties

The selectmen shall have the general supervision of the affairs of the town and shall cause to be performed all duties required of towns and town school districts not committed by law to the care of any particular officer.

19 V.S.A. § 304. Duties of selectmen

(a) It shall be the duty and responsibility of the selectboard of the town to, or acting as a board, it shall have the authority to:

(1) see that town highways and bridges are properly laid out, constructed, maintained, altered, widened, vacated, discontinued and operated, when the safety of the public requires, in accordance with the provisions of this title;

(2) take any action consistent with the provisions of law, including determinations made pursuant to subdivision 302(a)(3)(B) or subsection 310(a) of this title, which are necessary for or incidental to the proper management and administration of town highways;

(3) purchase tools, equipment and materials necessary for the construction, maintenance or repair of highways and bridges, and to incur indebtedness from the municipal equipment loan fund as established in section 1601 of Title 29 for these purchases. It may contract with governmental or private agencies for the use of tools, equipment, road building material, and services;

(4) order hills graded, surfaces graveled, or treated with a dust layer, or surface treated with bituminous material, upon any town highway either laid out by them or already existing;

(5) grant permission to enclose pent roads and trails by the owner of the land during any part of the year, by erecting stiles, unlocked gates and bars in the places designated and to make regulations governing the use of pent roads and trails and to establish penalties not to exceed $50.00, for noncompliance. Permission shall be in writing and recorded in the town clerk's office;

(6) make special regulations as to the operation, use and parking of motor vehicles on highways under their jurisdiction, as provided in Title 23;

(7) make special regulations as to the speed of motor vehicles using the highways under their jurisdiction, as provided in Title 23;

(8) lay out winter roads and lumber roads pursuant to chapter 9 of this title;

(9) change the course of a stream, pursuant to chapter 9 of this title;

(10) erect embankment on stream, pursuant to chapter 9 of this title;

(11) construct a watercourse, drain or ditch from a highway across lands of any person, pursuant to chapter 9 of this title;

(12) lay out, alter, classify, and discontinue town highways, pursuant to chapter 7 of this title;

(13) forward the town's annual plan for the construction and maintenance of town highways to the agency of transportation;

(14) keep accurate accounts, showing in detail all moneys received by them including from whom and when received and all moneys paid out by them, to whom and for what purpose, and settle the accounts with auditors not less than 25 days before the annual meeting;

(15) receive grant funds and gifts from public and private sources;

(16) unless the town electorate votes otherwise, under the provisions of 17 V.S.A. § 2646, appoint a road commissioner, or remove him or her from office, pursuant to 17 V.S.A. § 2651.

Road commissioners, elected or appointed, shall have only the powers and authority regarding highways granted to them by the selectmen;

(17) number houses and name highways if desired;

18) participate in cooperative purchasing arrangements with the state or other municipalities;

19) prepare a transportation plan and capital budget for transportation for voter approval;

20) retain staff and consultant assistance if needed in carrying out duties and powers;

21) issue permits for work in highway rights-of-way pursuant to 19 V.S.A. chapter 11;

22) regulate the location and relocation of utility wires and poles pursuant to 30 V.S.A. chapter 71; and

23) promulgate and adopt after public hearing(s) road specifications for highways to be built or rebuilt within the town in compliance with applicable statutes.

(b) Nothing in this chapter shall be construed to affect the rights and powers conferred on incorporated villages and cities by their charters to appoint street commissioners, collect and disburse highway taxes, and repair and maintain highways under their care.

APPENDIX 4
STATUTORY SOURCES OF LOCAL AUTHORITY

Advertisements. In addition to the state laws prohibiting most off-site outdoor advertising, 10 V.S.A. Chapter 21, towns may enact local ordinances which are more strict and not inconsistent with state law. 10 V.S.A. § 505. Towns may regulate or prohibit the erection, size, structure, content and location of signs, posters or displays on or above any public highway, sidewalk, lane or alleyway of the municipality and to regulate the use, size, structure, content and location of signs on private buildings or structures. 24 V.S.A. § 2291(7).

All-Terrain Vehicles. A selectboard may adopt ordinances pursuant to 24 V.S.A. Chapter 59 regulating the time, manner and location of ATV operation provided they not controvert Chapter 31 of Title 23. 23 V.S.A. § 3510. ATV operation is prohibited on sidewalks without permission of the selectboard. 23 V.S.A. § 3506(12). ATVs are also prohibited from operating along a town highway unless it is not being maintained during the snow season or unless the selectboard has opened the highway to ATV travel and has so posted. ATVs used for agricultural purposes may be used along local highways so long as they are at least three feet from the traveled portion.

Aqueducts. Towns may, through their selectboards, lay water pipes or aqueducts on private citizens' lands to provide water to a town hall or to provide water to a watering trough on a public highway. However, to do this, the town must be acting on behalf of public good and necessity. If the town and the property owner are unable to agree on compensation for land taken for use of an aqueduct, the town may take the land and have the determination of the necessity decided afterwards. 24 V.S.A. § 2801.

Bowling Alleys. The selectboard has the authority to grant licenses for bowling alleys. Town fees for bowling alleys should not exceed $25 per year. Rules and regulations for bowling alleys are effective only when they are recorded in the office of the town clerk. Bowling alleys that are operated by charitable, educational or fraternal organizations are exempt from these regulations. 31 V.S.A. §§ 503-507.

Cable Television. The selectboard has little control over cable television in its community. The Public Service Board (PSB) and the Department of Public Service (DPS) have authority over who owns, operates and provides cable in Vermont. 30 V.S.A. Chapter 13. Municipalities cannot refuse to grant a license to cable television companies if they are granted a license by the PSB. 1970-72 Op. Atty. Gen. 393.

The selectboard has three possible roles to play with cable television. First, in areas unserved by a system, the selectboard may request the assistance of the DPS. The PSB must then analyze and define the service territory, taking particular account of the type of service requested and the service provided currently to other contiguous areas. They must also prepare requests for proposals and submit those to companies to bid on the service. Any proposals received would be sent to the towns, with PSB comments. 30 V.S.A. § 512.

Second, in unserved areas a town can run a municipally-owned cable television company. 30 V.S.A. § 513. The selectboard can do so without charter provision. A town would obtain authorization for establishing the system from a vote of 60% of the voters, while a city would need 60% of the city council or a petition with 10% of the voters, both of which are subject to a voter referendum within one year of the acquisition. Municipal cable companies have to obtain a certificate of public good from the Public Service Board.

Last, in towns served by cable companies, the selectboard becomes a party to the certificate of public good hearings, representing the interest of the municipality and its citizens before the PSB when a company is being permitted.

Cemeteries. The selectboard, acting as the cemetery commission, may enact an ordinance to regulate cemeteries and burial of the dead. 18 V.S.A. § 5378.

Coasting on Sleds. The selectboard has the authority to prohibit coasting on highways and shall do so "when it endangers the lives or property of travelers." A notice of this prohibition shall be posted in two or more conspicuous places in the area. Villages and cities may have regulations that allow coasting, but they must be enacted as such. The fine for violating this regulation is $2.00. 31 V.S.A. §§ 511-512.

Codes

1. **Building Codes.** Municipalities are authorized to adopt building codes and regulations for the purpose of protecting public health, safety and welfare. These codes establish standards for materials, design, passageways, stairways, exits, heating systems and fire protection. 24 V.S.A. § 3101. This may include rules relating to building materials, structural design, passageways, stairways and exits, heating systems, fire protection procedures and other aspects of buildings except for electrical installations, which are subject to state regulation per 26 V.S.A. Chapter 15.

   It seems clear that building codes apply to new construction. However, the statute also refers to "maintenance, repair, and alteration" of buildings, indicating that the municipality has the authority to require changes in existing structures under certain circumstances. 24 V.S.A. § 3101.

   Building codes are ordinances and must be properly adopted according to the procedural requirements of 24 V.S.A. Chapters 59 and 83. In addition, there are two other statutory considerations. First, a code must be consistent with the safety standards set by the Vermont Department of Labor in 21 V.S.A. Chapter 3. Those standards apply to any building where people are employed, whether privately or municipally owned. Second, the municipal code must be consistent with any building code requirements set by the Legislature. Vermont law currently incorporates the *BOCA National Building Code*, a comprehensive code issued by the non-profit Building Officials and Code Administration organization. In fact, the Legislature may actually change your code by adopting new standards, since the new standards will supersede anything in your code which conflicts with them. Also, be aware that certain types of buildings or businesses are already regulated by the Health Department. For example, hospitals, nursing homes, establishments which sell food, and programs for asbestos removal or lead paint control must meet Health Department standards.

   Anyone who is contemplating writing a municipal building code should also be familiar with the Americans with Disabilities Act's (ADA) regulations covering the accessibility of public buildings as all municipal building codes must comply with the ADA. For more information on the ADA, see Chapter 13, Section N, on the accessibility of town services to the disabled.

2. **Housing Codes.** Municipalities may adopt housing code ordinances establishing "minimum standards for dwellings," 24 V.S.A. § 5003, following the procedure in 24 V.S.A. Chapter 59. Any such ordinance must include provisions for the recording of orders issued, a

relocation plan for people displaced under the ordinance, and a mechanism for canceling orders that have been followed. Any municipality which adopts a housing code ordinance must establish an agency to administer it and a housing board of review to conduct hearings on matters appealed to the Superior Court.

3. **Plumbing Codes.** Any city, town or village may adopt rules setting standards for plumbing. 26 V.S.A. § 2174. If the municipality can show that it has satisfactory rules and the resources and intent to enforce those rules, it may be exempt from state rules and inspectors.

Curfews. Municipalities may make "curfew" regulations pursuant to 24 V.S.A. § 2151 if such regulations are conducive to the welfare of children and the good of the people generally. A $5.00 penalty for each violation of curfew regulations may be charged.

Dance Halls. The selectboard, city council and village trustees can issue, and revoke for cause, a license to a dance hall (a place where dancing occurs, admission is charged and the public is welcome). 31 V.S.A. § 503. The annual fee shall not exceed $25, or $5 in the case of a single dance. A police officer shall be present when dancing is conducted, unless the selectboard approves the employment of a licensed security guard in place of the officer.

Dogs. In addition to 24 V.S.A. § 2291 (10), which allows municipalities to regulate dogs, state law provides selectboards with the authority to regulate domestic pets and wolf-hybrids generally. 20 V.S.A. § 3549.

Eating Establishments. The selectboard may regulate bakeries as long as they comply with the Vermont state board of health. 18 V.S.A. §§ 4449 et seq. The board may also license restaurants and other places dispensing food and drink to the public. 9 V.S.A. § 3061.

The Vermont state board of health has regulatory power to ensure that eating establishments (restaurants, bars, cafes, food stands and bakeries) are maintained in a clean, sanitary and healthy manner. The department issues annual licenses to and performs routine inspections of all eating establishments in the state. The license fee schedule can be found in 18 V.S.A. § 4353 (bakeries license fees 18 V.S.A. § 4446).

Environmental Protection

1. **Air Pollution.** A selectboard may adopt a municipal air pollution control program, if the ordinance establishing the program is at least as strict and extensive as state air pollution control laws. The Agency of Natural Resources (ANR) secretary must approve a local program, after finding the municipality has the resources and staff to administer the program. 10 V.S.A. §§ 564, 569.

2. **On-site Septic.** A municipality may adopt an on-site sewage ordinance, but the system design standards must meet the minimums set by ANR. 24 V.S.A. §§ 3632-3633. ANR must approve any municipal ordinance before it takes effect, and a local on-site septic ordinance must require that a permit be obtained before the installation or replacement of a system.

3. **Sewage Disposal Systems.** Selectboards, acting as sewage disposal commissioners, may adopt ordinances for the control and operation of municipal sewage systems. 24 V.S.A. § 3617. When a municipal wastewater treatment plant obtains a discharge permit from the state, the municipality must also enact an ordinance creating standards for the allocation of sewage capacity. 24 V.S.A. § 3625.

4. **Smoking.** The state's smoking policy includes an admission that the state law is not intended to interfere with the smoking ordinances of municipalities. 18 V.S.A. § 1428. The municipal authority to adopt smoking ordinances is unclear, but presumably would come under 18 V.S.A. § 613.
5. **Water Supply.** A municipality may enact an ordinance to regulate the control and operation of a municipal water works. 24 V.S.A. § 3315.

Fireworks. Before a person can conduct a supervised public display of fireworks, he or she must obtain a permit from the fire chief of the town, or if there is no fire department, from the selectboard, at least 15 days prior to the display. 20 V.S.A. § 3132. Farmers intending to use fireworks to frighten birds from crops must obtain a permit from the selectboard or the town fire warden. 20 V.S.A. § 3133. Such permits can only be issued if they present no fire or safety hazard.

Health. The local board of health, which is comprised of the selectboard and the health officer, is authorized by state statute to make and enforce rules and regulations in such town or city relating to the prevention, removal or destruction of public health hazards and the mitigation of public health risks. 18 V.S.A. § 613.

Highways. The selectboard has the authority to set local speed limits, provided that it has conducted a traffic and engineering study to justify the new limits. 23 V.S.A. § 1007. The board may also adopt ordinances on the operation, use, and parking of motor vehicles. 23 V.S.A. §§ 1008, 1105. A local ordinance may also be adopted regulating the towing of vehicles parked without authorization on publicly or privately owned land. This may include public, municipal or private lots, drives and ways. 23 V.S.A. § 1753.

Hotels, Motels/Innkeepers. The selectboard may issue annual licenses to innkeepers. 9 V.S.A. § 3061. In unorganized towns and gores, this is the responsibility of superior court judges. "Innkeeper" in this section refers to a person who owns and/or operates an inn, hotel, motel or lodging house. Section 3061 does not apply to homes catering to tourists, tearooms or tourist camps.

The licenses for innkeepers must be recorded in the town clerk's office. The fine for not having a license ranges from $10 to $50. If the selectboard does not "revoke a license granted by them when the public good so requires", the license can be revoked through a request of the county's state's attorney or the town's grand juror to an assistant judge of superior court. Innkeepers must keep a record (names and addresses) of registration of guests for three years. 9 V.S.A. § 3063.

Housing. A municipality may enact ordinances regulating and licensing trailer parks. 24 V.S.A. § 2231. The statute sets out a model ordinance for towns that have no zoning. In towns, this ordinance requires the approval of the electorate at an annual or special town meeting; in villages and cities, the approval of the legislative body may be sufficient if the charter so provides. 24 V.S.A. § 2233. The selectboard may also draft ordinances governing the conversion of rental units to condominiums. Such an ordinance must be submitted to the voters for their approval. 24 V.S.A. § 2293. These ordinances must be supplemental to and not inconsistent with the laws relating to condominiums. (See 27 V.S.A. § 1331-1339.) A municipality may also adopt an ordinance governing security deposits on rental properties. 9 V.S.A. § 4461(g). The ordinance can address issues such as interest payments on a deposit and the creation of a local board to hear

and decide disputes about security deposits. Further consumer protections in the areas of water and sewer disconnections are authorized by 24 V.S.A. § 5148, which allows the selectboard to adopt an ordinance providing for "greater protection" than that already afforded citizens by state water and sewer disconnect laws.

Impact Fees. Any municipality that has been confirmed in its commitment to the planning process and after July 1, 1992 has adopted a capital budget and program may adopt an impact fee ordinance. 24 V.S.A. § 5203. The ordinance may be adopted either as an ordinance under 24 V.S.A. § 1971 or as part of a zoning bylaw.

Junkyards. Junkyards are defined in 24 V.S.A. § 2241(7) as "any place of outdoor storage or deposit which is maintained, operated or used in connection with a business for storing, keeping, processing, buying or selling junk or as a scrap metal processing facility." It also means "any place of outdoor storage or deposit, not in connection with a business, which is maintained or used for storing or keeping four or more junk motor vehicles which are visible from any portion of a public highway."

State law grants the transportation board control over regulating junkyards. This control can be superseded by local ordinances (many municipalities address junkyards in their zoning ordinances) which are more stringent than state regulations of junkyards. 24 V.S.A. § 2243.

Licensing of a junkyard is a joint effort between the transportation board and the selectboard. Junkyard owners must apply to the municipality's legislative body (selectboard) for a "Certificate of Approved Location" and pay an accompanying fee of $25 plus advertising and other reasonable costs for the hearing on their application. The hearing must be held by the selectboard not less than two nor more than four weeks from the date of receipt of the application. Some of the factors to take into consideration include: location, size, proximity to interstates, zoning bylaws and aesthetics. The selectboard must issue its decision within two weeks of the hearing, and can make a Certificate of Approval good for three to five years.

Operators of junkyards must also have a license issued by the transportation board. 24 V.S.A. §§ 2242, 2261.

Motor Vehicle Racing. No motor vehicle racing is permitted unless approved by both the selectboard and the state motor vehicle racing commission. 26 V.S.A. § 4802. Approved permits must be filed with the town clerk. Separate permits are required for each race location. The permit shall include: name and address of permittee, race location description, race days and hours, implementation procedures for safety standards, anticipated number of spectators and service and accommodations provided by the committee during the race. 26 V.S.A. § 4805. The state charges substantial application and renewal fees for racing permits. A municipality may charge an additional fee, but the fee may not exceed the municipality's costs associated with the race. 26 V.S.A. § 4806.

The permittee must obtain liability insurance for bodily injury with limits of not less than $500,000 per individual and $2 million per event and property damage with limits of not less than $2 million. 26 V.S.A. § 4808. The insurance certificate must be filed with the town clerk and the racing commission. Permits issued on and after October 1 of any year remain in force until the following September 30, unless lawfully revoked. The racing commission may refuse any permit for cause and may revoke permits, for failure to comply with any regulation of the commission. 26 V.S.A. § 4813.

The racing commission or Department of Public Safety, acting as agent for the commission, may inspect any race facilities before or during any race and may suspend any permit immediately for failure to comply with this chapter or any race regulation. 26 V.S.A. § 4810. Minimum safety standards for motor vehicle racing are set out in 26 V.S.A. §§ 4811 and 4812. The penalty for violation of these regulations is not more than $1000.00 or not more than 30 days imprisonment or both. 26 V.S.A. § 4802.

Natural Gas and Oil Resources. Municipalities are specifically stripped of any authority to specify performance standards, methods, materials, procedures or equipment to be used by a gas or oil well operator. The provisions of the Vermont Natural Gas and Oil Conservation Act (29 V.S.A. Chapter 14) supersede them. However, local governments may regulate specific uses permitted or prohibited in land use or zoning districts, and other matters not fully covered by state law, regulation or rule of the Vermont Natural Gas and Oil Reserves Board, to the extent that local regulation does not conflict or interfere with state regulation. 29 V.S.A. § 566.

Nuisances. Municipalities can enact ordinances which define and regulate public nuisances. 24 V.S.A. § 2291(14). Excessive noise, unlicensed domestic pets, unsafe buildings, old automobile parts and sewage are just a few of the items or conditions defined as public nuisances by Vermont municipalities.

Obscenity. Municipalities have no authority to enact obscenity ordinances or regulations in conflict with 13 V.S.A. Chapter 63, the state statutes which try to address the issue. 13 V.S.A. § 2808. This state statute "shall be applicable and uniform throughout the state and all political subdivisions and municipalities therein ..."

Pawnbrokers. Pawnbrokers loan money on deposit of, or pledge of, personal property. The selectboard has the authority to grant licenses to pawnbrokers deciding where and how their businesses can be run. Pawnbrokers must file a $500 bond with the municipality and keep an accurate record book. Pawnbrokers can only charge 5% on loans less than $50 and no more than 3% for loans more than $50. 9 V.S.A. §§ 3861-3871.

Pool Halls. Anyone wishing to operate a pool hall should obtain a license to do so from the legislative body of the municipality in which the pool hall will be located. 31 V.S.A. § 503. The legislative body of a municipality has the authority to make regulations about how pool halls will be operated, and can revoke pool hall licenses for cause. The rules will be recorded in the clerk's office of the municipality. Pool halls which are run by fraternal, educational or charitable organizations are exempt from regulations. Violators of the statutory provisions for pool halls shall be fined between $25 and $100.

Snowmobiles. Municipalities are authorized to adopt ordinances regulating the time, manner and location of operation of snowmobiles within their limits. 23 V.S.A. § 3210. However, the ordinances must be consistent with the provisions of 23 V.S.A. §§ 3201-3216.

Taxis. The selectboard has the authority through 24 V.S.A. § 2031 to regulate jitneys and taxis in their municipality. The regulations proposed by the selectboard are subject to approval of a majority of voters in the municipality at a special or annual town meeting. These regulations can include operation, parking, soliciting, delivery and fares. A fine of up to $100 per violation can be levied against violators of the regulations.

Television and Radio Interference. Upon receiving a complaint, the selectboard can give notice, investigate and order corrected or eliminated any unreasonable disturbing or interfering

with the reception of radio or television waves. If such order is not complied with within a reasonable time set forth in the notice, and if the cost of compliance is less than $50, the selectboard may fine the perpetrator not more than $50. 24 V.S.A. §§ 2091-2093.

Theatres, Concert Halls. The selectboard has the authority to grant licenses to theaters or concert halls which are for profit. If a theater or concert hall operates without a license, a fine of not more than $100 a day will be imposed upon the owner of the theater. 31 V.S.A. §§ 442, 443.

APPENDIX 5
CHART OF INCOMPATIBLE OFFICES

Can a Person Hold Both of These Offices?	Auditor	Selectperson	School Director	Town Manager	Town Treasurer	Election Official & Candidate (Australian Ballot)	Election Official & Candidate (Not Australian Ballot)	School District Employee[1]	Spouse
Auditor	—	No	No	No	No	No, If Opposed	No	Yes	3
Selectperson	No	—	Yes	No	No	No	No	Yes	
School Director	No	Yes	—	No	No	No, If Opposed	No	No	
Town Manager	No	No	No	—	No	No	No	Yes	
Town Treasurer	No	No	No	No	—	No, If Opposed	No	Yes	
Town Clerk	No	Yes	Yes	No	Yes	Yes	No	Yes	
Assist. Town Clerk	No	Yes	Yes	No	Depends[2]	N/A	N/A	Yes	
Town Agent	Yes	No	No	No	Yes	No, If Opposed	No	Yes	
First Constable	No	No	No	No	Yes	Yes	No	Yes	
Road Commissioner	No	Yes	Yes	No	Yes	No, If Opposed	No	Yes	
Trustee of Public Funds	No	Yes	Yes	No	Yes	No, If Opposed	No	Yes	
Lister	Yes	No	Yes	No	Yes	No, If Opposed	No	Yes	
Tax Collector, Current	No	No	No	Yes	Yes	No, If Opposed	No	Yes	
Tax Collector, Delinquent	No	No	No	Yes	Yes	No, If Opposed	No	Yes	
Grand Juror	Yes	Yes	Yes	No	Yes	No	No	Yes	
Inspector of Elections	Yes	Yes	Yes	No	Yes	Yes	No	Yes	
Justice of the Peace	Yes	Yes	Yes	No	Yes	Yes	No	Yes	

1 Within same supervisory union.
2 See 24 V.S.A. § 1622.
3 A spouse of a town clerk, town treasurer, selectperson, trustee of public funds, town manager, water commissioner, sewer commissioner, first constable, road commissioner, collector of current or delinquent taxes, or town school district director, or any person who assists any of these officers may not be an auditor. 17 V.S.A. § 2647.

APPENDIX 6
CONFLICT OF INTEREST POLICY

Town of _____
[for adoption by legislative body as a policy; applies to all "public officers"]

Article 1. Authority. Under the authority granted in 24 V.S.A. § 2291(20), the selectboard of _____ hereby adopts the following policy concerning conflict of interest.

Article 2. Purpose. The purpose of this policy is to ensure that the business of this municipality will be conducted in such a way that no public official of the municipality will gain a personal or financial advantage from his or her work for the municipality and so that the public trust in municipal officials will be preserved. It is also the intent of this policy to insure that all decisions made by municipal officials are based on the best interest of the community at large.

Article 3. Definitions. For the purposes of this policy, the following definitions shall apply:

A. **Conflict of interest** means any of the following:

1. A direct or indirect personal interest of a public officer, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother or sister in law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the officer or before the public body in which he or she holds office or is employed;

2. A direct or indirect financial interest of a public officer, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother or sister in law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the officer or before the public body in which he or she holds office or is employed;

3. A situation where a public officer has publicly displayed a prejudgment of the merits of a particular quasi-judicial proceeding before the board. This shall not apply to a member's particular political views or general opinion on a given issue; and

4. A situation where a public officer has not disclosed ex parte communications with a party in a proceeding before the board.

B. **Emergency** means an imminent threat or peril to the pubic health, safety or welfare.

C. **Official act or action** means any legislative, administrative or judicial act performed by any elected or appointed officer or employee while acting on behalf of the municipality.

D. **Public body** means any board, council, commission or committee of the municipality.

E. **Public interest** means an interest of the community as a whole, conferred generally upon all residents of the municipality.

F. **Public officer** or **public official** means a person elected or appointed to perform executive, administrative, legislative ore quasi-judicial functions for the municipality.

G. **Quasi-judicial proceeding** means a case in which the legal rights of one or more persons who are granted party status are adjudicated, which is conducted in such a way that all parties have opportunities to present evidence and to cross-examine witnesses presented by other parties, which results in a written decision, the result of which is appealable by a party to a higher authority.

Article 4. Disqualification.

A. A public office shall not participate in any official action if he or she has a conflict of interest in the matter under consideration.

B. A public officer shall not personally, or through any member of his or her household, business associate, employer or employee, represent, appear for, or negotiate in a private capacity on behalf of any person or organization in a cause, proceeding, application or other matter pending before the public body in which the officer holds office or is employed.

C. In the case of a public officer who is an appointee, the public body which appointed that public officer shall have the authority to order that officer to recuse him or herself from the matter.

D. Public officers shall not accept gifts or other offerings for personal gain by virtue of their public office that are not available to the public in general.

E. Public officers shall not use resources not available to the general public, including but not limited to town staff time, equipment, supplies, or facilities for private gain or personal purposes.

Article 5. Disclosure. A public officer who has reason to believe that he or she ha or may have a conflict of interest but believes that he or she is able to act fairly, objectively and in the public interest in spite of the conflict of interest shall, prior to participating in any official action on the matter disclose to the public body at a public hearing the matter under consideration, the nature of the potential conflict of interest and why he or she believes that he or she is able to act in the matter fairly, objectively and in the public interest. Nevertheless, the person or public body which appointed that public officer retains the authority to order that officer to recuse him or herself from the matter, subject to applicable law.

Article 6. Recusal.

A. A public officer shall recuse him or herself from any matter in which he or she has a conflict of interest, pursuant to the following:

   1. Any person may request that a member recuse him or herself due to a conflict of interest. Such request shall not constitute a requirement that the member recuse him or herself;

   2. A public officer who has recused him or herself from a proceeding shall not sit with the board, deliberate with the board, or participate in that proceeding as a board member in any capacity;

   3. If a previously unknown conflict is discovered, the board may take evidence pertaining to the conflict and, if appropriate, adjourn to a short deliberative session to address the conflict; and

   4. The board may adjourn the proceedings to a time certain if, after a recusal, it may not be possible to take action through the concurrence of a majority of the board. The board may then resume the proceeding with sufficient members present.

   In the case of a public officer who is an appointee, the public body which appointed that public officer shall have the authority to order that officer to recuse him or herself from the matter, subject to applicable law.

Article 7. Enforcement; Progressive Consequences for Failure to Follow the Conflict of Interest Procedures. In cases where the conflict of interest procedures in Articles 5 and 6 have not been followed, the selectboard may take progressive action to discipline an offending public officer. In the discipline of a public officer, the board shall follow these steps in order:

A. The chair shall meet informally, in private, with the public officer to discuss possible conflict of interest violation.

B. The board may meet to discuss the conduct of the public officer. Executive session may be used for such discussion, in accordance with 1 V.S.A. § 313(4). The public officer may request that this meeting occur in public. If appropriate, the board may admonish the offending public officer in private.

C. If the board decides that further action is warranted, the board may admonish the offending public officer at an open meeting and reflect this action in the minutes of the meeting. The public officer shall be given the opportunity to respond to the admonishment.

D. Upon majority vote, the board may request that the offending public officer resign from the board.

Article 8. Exception. The recusal provisions of Article 6 shall not apply if the legislative body of the municipality determines that an emergency exists and that actions of the public body otherwise could not take place. In such cases, a public officer who has reason to believe he or she has a conflict of interest shall disclose such conflict as provided in Article 5.

Article 9. Effective Date. This policy shall become effective immediately upon its adoption by the _____selectboard/city council/trustees.

Signatures: _____ _____

_____ _____

_____ Date: _____

APPENDIX 7
PURCHASING POLICY

1. PURPOSE. The purpose of this policy is to create a process for purchasing goods and services that will increase efficiency, promote fairness, accountability and confidence, and provide necessary supplies and services in a timely and cost-effective manner.

2. APPLICATION. This policy shall apply to all purchases of goods and services by the Town of _____ except where conditions of state or federal funds, or conditions of a grant, gift or bequest mandate otherwise.

3. DEFINITIONS.

a. *Major purchases* are those purchases of goods or services in an amount of $_____ or more.

b. *Regular purchases* are those purchases of goods or services in an amount of at least $_____ but less than $_____.

c. *Incidental purchases* are those purchases of goods and services in an amount of $_____ or less.

d. *Sole source vendor* is a vendor approved by the legislative body to provide certain goods and services for the Municipality.

e. *Emergency purchases* are those urgent purchases of goods and services that are required to protect the public health, safety and welfare.

4. PROCEDURES.

a. **Major purchases** require a formal bid process which shall include:

1.) Advertisement of the invitation to bid or request for proposal (RFP) for at least one week in a newspaper of general circulation in the Municipality of _____;

2.) Advertisement of the invitation to bid or RFP in other newspapers at the discretion of the [municipal manager/legislative body];

3.) Direct notice of the bid or RFP to specific providers at the discretion of the [municipal manager, legislative body];

4.) Notice of the place and deadline for receipt of the sealed bids or RFPs;

5.) A description of the supplies, materials, equipment or services required and information on how and where to obtain more detailed specifications and bid or RFP forms;

6.) Information on insurance requirements for the bidder or proposer;

7.) A statement of the right of the Municipality of [_____] to reject any and all bids or RFPs if doing so is deemed by the legislative body to be in the best interests of the Municipality; and

8.) Public opening of the bids or RFPs by the legislative body at a time not less than 10 business days after the deadline for receipt.

b. **Regular purchases** require competitive solicitation of bids or RFPs but *may be done* by the formal bid process. Competitive solicitation includes:

   1.) Soliciting bids or quotations from at least two (preferably three) vendors unless a sole source vendor has been approved by the [municipal manager/legislative body]; and

   2.) Selection of vendor based on quality of the goods and services offered, cost, ability of the vendor to provide future maintenance, and the ability, capacity and skill of the vendor demonstrated under prior contracts with the Municipality.

c. **Incidental purchases** may be made without a formal bid or competitive solicitation. Such purchases may be made by [department heads, municipal manager, purchasing agent, designee of the municipal manager or legislative body]. Incidental purchasing choices shall be made based on cost, quality of goods and services, and the best interests of the Municipality.

d. **Sole Source Vendor**. The legislative body may approve a sole source vendor for regular or incidental purchases. Approval shall be made annually at the first regular meeting of the legislative body held in the Municipality's fiscal year and shall take into account general availability of the goods or services, quality and cost of the goods and services, and the ability, capacity and skill of the vendor demonstrated under prior contracts with the Municipality.

e. **Leasing Equipment**. The [municipal manager/legislative body] shall approve all leasing of equipment.

f. **Purchase of Professional Services**. The purchase of professional services for the Municipality shall be exempt from the formal bid process. Such services include, but are not limited to, legal counsel, insurance, engineering/architectural services and consulting services. The legislative body shall purchase such services according to the best interests of the Municipality.

g. **Cooperative Purchasing**. The Municipality may enter into cooperative lease or purchase agreements with other municipalities, at the discretion of the legislative body.

h. **Emergency Purchases**. When an emergency threatens the health, lives or property of the residents of the Town, or threatens the property of the Town or the delivery of necessary services to the residents of the Town, the [town manager/legislative body, health officer, road commissioner, fire chief, police chief, constable, service officer, water or sewer commissioners, emergency management chairperson, fire warden] shall have the authority to purchase emergency supplies and services while acting in the best interests of the town.

ADOPTED: _____ _____

_____ _____

_____ _____

Signatures Date

APPENDIX 8
VLCT MODEL SELECTBOARD RULES OF PROCEDURE

A. PURPOSE. The selectboard of the Town of _____ is required by law to conduct its meetings in accordance with the Vermont Open Meeting Law. 1 V.S.A. §§ 310-314. Meetings of the selectboard of the Town of _____must be open to the public at all times, except as provided in 1 V.S.A. § 313. At such meetings, the public must be afforded reasonable opportunity to give its opinion on matters considered by the selectboard so long as order is maintained. Such public comment is subject to the reasonable rules established by the chair of the selectboard. 1 V.S.A. § 312(h).

B. APPLICATION. This policy setting forth rules of procedure for selectboard meetings shall apply to all regular, special, and emergency meetings of the Town of _____ selectboard.

C. PROCEDURES.

1. The chair of the selectboard, or in the chair's absence, the vice-chair, shall chair all selectboard meetings. If both the chair and the vice-chair are absent, a member selected by the board shall chair the meeting.

2. The chair shall rule on all questions of order or procedure and shall enforce these rules as required by 1 V.S.A. § 312(h).

3. A majority of the members of the selectboard shall constitute a quorum. If a quorum of the members of the selectboard is not present at a meeting, the only action that may be considered by the selectboard is a motion to recess or adjourn the meeting.

4. At the beginning of each selectboard meeting, there shall be ___ minutes afforded for open public comment. By [unanimous/two-thirds/majority] vote, the selectboard may increase the time for open public comment and may adjust the agenda items and times accordingly.

5. Each selectboard meeting shall have an agenda, with time allotted for each item of business to be considered by the selectboard. Those who wish to be added to the meeting agenda shall contact the [town manager/selectboard chair/town clerk] to request inclusion on the agenda. The selectboard chair shall determine the final content of the agenda.

6. All business shall be conducted in the same order as it appears on the agenda, except that by [unanimous/two-third/majority] vote of the selectboard, the order of items to be considered and/or the time allotted may be modified.

7. Public comment on issues discussed by the selectboard, if not offered during the open public comment period, may be offered during the meeting with the permission of the chair. Such comment, if permitted, shall be limited to ___ minutes, unless by [unanimous/two thirds/majority] vote, the selectboard increases the time for public comment.

8. Meetings may be recessed to a time and place certain.

9. These rules shall be made available at all meetings, and procedures for public comment shall be reviewed at the beginning of all meetings.

10. These rules may be amended by [unanimous/two thirds/majority] vote of the selectboard, and must be readopted annually at the organizational meeting.

ADOPTED: _____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Signatures Date

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