

Can a non-“rural town” adopt zoning bylaws, amendments and repeals by Australian ballot?

Yes, but only if the town has a population of less than 5,000 persons and it has previously voted to be considered a “rural town” for purposes of Title 24, Chapter 117.

State law on this matter instructs that “a rural town, by action of the legislative body or by vote of that town at a special or regular meeting duly warned on the issue, may elect to require that bylaw amendments or repeals shall be adopted by vote of the town by Australian ballot at a special or regular meeting duly warned on the issued. That procedure shall then apply until rescinded by the voters at a regular or special meeting of the town.” 24 V.S.A. § 4442(c)(2).

A “rural town” is defined as “a town having, as at the date of the most recent United States census, a population of less than 2,500 persons, as evidenced by that census, or a town having 2,500 or more but less than 5,000 persons that has voted by Australian ballot to be considered a rural town.” 24 V.S.A. § 4303(25).

Accordingly, a “rural town” (one with a population of less than 2,500 persons) has two options for transferring this authority from its legislative body to the voters. It may either have its voters vote, by whatever manner it decides public questions (from the floor or Australian ballot), at a duly warned special or regular town meeting to adopt bylaws, amendments and repeals by Australian ballot, or its legislative body may give this authority directly to the voters by majority vote.

A town with a population greater than 2,500, but less than 5,000 is different, however, from a “rural town” in that it must first vote to be considered a “rural town.” In other words, such a town cannot elect to require that bylaws, amendments and repeals be adopted by vote of Australian ballot if it has yet to designate itself as a rural town. This vote must occur by Australian ballot even if the town decides all of its public questions from the floor.

Once a rural town elects to adopt its bylaws, amendments and repeals by Australian ballot, only the voters may return this authority to its legislative body. Alternatively, if a legislative body elects to require that the voters adopt bylaws, amendments and repeals by Australian ballot, then the town must adhere to this process until the voters vote otherwise. Therefore, the legislative body has no authority to cede this authority to the voters for only a limited duration. 24 V.S.A. § 4442(c)(2). Once it is given, it cannot be taken back.

Finally, because the vote to be considered a rural town must take place by Australian ballot, it cannot occur contemporaneously with the vote to adopt bylaws, amendments and repeals by Australian ballot as a town would not know whether it was indeed a rural town in time to have the requisite legal authority to vote on the latter article.

Whether a town chooses to adopt bylaws by Australian ballot or by action of the legislative body is a policy choice. The default method in Chapter 117 is to adopt by action of the legislative body, just like other municipal ordinances. This allows towns to update bylaws more frequently and align bylaws better with the town plan. Adopting bylaws via Australian ballot vests more authority with the voters and tends to encourage less frequent updates to the bylaws. However, it

may be a better fit for certain towns, particularly towns with an elected planning commission or where the tradition of voter adoption is firmly established.

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