

ASK THE LEAGUE, AUGUST 2012

How will the 2012 legislative session affect municipal operations?

Following are some of the Vermont Legislature's changes to Vermont laws that will impact how municipalities conduct their business. Most of the changes are effective as of July 1, 2012. For further analysis of these changes, please refer to VLCT's *2012 Legislative Wrap Up*, which is archived at www.vlct.org/advocacy/session-wrap-up/.

Municipal Ordinance Notification. The legislature modified what is required to be included in the *contents of the public notice* following adoption of a municipal ordinance by the selectboard. 24 V.S.A. § 1972(a)(1). The actual adoption process, however, remains unchanged. The selectboard will still adopt an ordinance by majority consent of the total membership of its body, at a regularly scheduled or special selectboard meeting, “and shall cause it to be entered into the minutes of the municipality and posted in at least five conspicuous places in the municipality.” The notice in the newspaper must still be provided within 14 days following the date the ordinance was adopted, and the selectboard's act of adopting the ordinance remains subject to voter petition according to 24 V.S.A. § 1973.

The contents of the notice in the newspaper under the previous law consisted of the full text of the ordinance, *or* a concise summary, including a statement of purpose, principal provisions, a table of contents or list of section headings, and the location where the full text of the ordinance may be examined. It also required that the notice include a name, address, and telephone number of a person who could answer questions about the ordinance. This notice requirement has been amended.

The newspaper notice must still include the full text or a concise summary of the ordinance, but regardless of which format is used, both must include:

- the name of the municipality;
- the municipal website, if the municipality “actively updates its website on a regular basis”;
- the title or subject of the ordinance or rule;
- the name, telephone number, and mailing address of a municipal official to answer questions and receive comments; and
- the location in the municipality where the full text can be examined.

The voters' rights to petition for a vote on the ordinance at a regular or special meeting of the town must still be included as part of this notice, as under previous law. If the selectboard does not receive a petition within 44 days following the date of adoption (24 V.S.A. § 1973), then the ordinance becomes effective 60 days later, or a date after the 60 days as set by the selectboard. 24 V.S.A. § 1972(a)(2).

Fines Increased. The maximum fine for municipal ordinance violations was increased to \$800. 24 V.S.A. § 1974a. Penalties for violations of land use bylaws or land use permits were increased

from \$100 to \$200 for each offense. 24 V.S.A. § 4451. If a land use bylaw is designated as a civil ordinance enforceable in the Judicial Bureau then the penalty may be raised to the \$800 limit. 24 V.S.A. § 1974a. In light of these increases, towns may want to amend their ordinances and zoning violation fee schedules and the accompanying waiver fees accordingly.

Confrontational Canine Canon Changed. Prior to this legislative session, selectboards frequently found themselves the unwitting participants in a game of “monkey in the middle” between irresponsible dog owners and the owners of domestic animals they attacked. Whenever a person suffered loss from a dog that worried, maimed, or killed a domestic animal, he or she could apprise a selectboard member of the damage done. The selectperson was then required to conduct an investigation, make an appraisal, make a payment, kill the dog, and then sue the dog owner to recover the damages paid. Whatever arcane reason for the selectboard’s involvement in what is in essence a civil dispute between two private parties has long since disappeared, and this statute was repealed in its entirety. Towns no longer have any statutorily mandated involvement in dog attacks on domestic animals. It is now exclusively a private civil matter between a dog owner and the owner of the animal that was attacked.

The specific sections repealed in Title 20 are:

- § 3741, Election of remedy;
- § 3742, Notice of damage; appraisal;
- § 3743, Examination of certificate;
- § 3744, Fees and travel expenses;
- § 3745, Identification and killing of dogs;
- § 3746, Action against town; and
- § 3747, Action by town against owner of dogs.

Abatement Clarification. Twenty four V.S.A. § 1535 (a) has been amended to clearly allow the board of abatement to” abate in whole or in part taxes, interest, or collection fees ...” This provides greater flexibility for the property owner and the board of abatement when making or considering a request for statutory abatement reasons. The amendment also brings subsection (a) of that statute in line with existing subsection (c), where it provides that”[t]he board shall, in any case in which it abates taxes, interest, *or* collection fees accruing to the town, or denies an application for abatement, state in detail in writing the reasons for its decision.” [Emphasis added.] This amendment codifies the Municipal Assistance Center’s opinion concerning interpretation of the abatement statute.

New Internal Financial Controls Requirements. In an effort to eliminate opportunities for embezzlement in municipal government, the legislature has directed the state auditor to work with various organizations, including VLCT, to develop a one-page document to help all of Vermont’s municipalities determine the” internal financial controls in place to assure proper use of all public funds.” 32 V.S.A. § 163 (11). This document must be completed by the town treasurer and filed with the selectboard by June 30. 24 V.S.A. § 1571(d). The selectboard must review and acknowledge receipt of the document by the following July 31. 24 V.S.A. § 872(b). The selectboard may also require other officers and employees who are authorized to receive or disburse funds to complete the document and return to the selectboard within 30 days of the selectboard’s request. Again, the selectboard must acknowledge receipt and review the document within 30 days of receiving it.

Another financial control now mandated by the law is that all officers or employees of the town that have the authority to receive or disburse town funds must be bonded. This expands bonding requirements to cover individuals who work at a municipal transfer station or accept payment for things such as permit fees on behalf of the municipality.

The treasurer is also now responsible for quarterly reporting to the legislative body regarding town accounts of money, bonds, notes, and evidences of debt paid or delivered, moneys paid out by for the town and town school district, and money received and invested by the treasurer with the approval of the legislative body. 24 V.S.A. § 1571(c).

Finally, the state auditor must institute an educational program to assist officials with their fiduciary responsibilities. 32 V.S.A. § 163 (12). VLCT and the State Auditor's Office have co-sponsored the annual Governmental Accounting and Auditing Symposium for several years.

Later this fall, the Municipal Assistance Center and PACIF will release an internal controls checklist and a guidance document to help towns improve financial management.

Universal Recycling. There are substantial changes to the way Vermont will dispose of and collect its solid waste in the years to come in order to reduce the volume of waste sent to landfills and divert as much of it as possible to reuse, recycle, and compost. The legislature set deadlines for when certified solid waste collection facilities will begin collecting items diverted from the waste stream and limitations on their ability to charge fees for this collection. Specifically affecting municipalities is a requirement that all “public buildings,” which include municipal and school buildings and schools, and “public lands,” which include all land owned or controlled by a municipality, must have containers for mandated recyclables in the same number and placement as solid waste containers used for disposal. The new collection containers must be clearly labeled. This requirement does not apply to public bathrooms, however. This requirement goes into effect July 1, 2015. 10 V.S.A. § 66051. Another deadline that municipalities that collect solid waste must be aware of is July 15, 2015, when they will be required to implement “pay as you throw” pricing for all of their residential solid waste customers. 24 V.S.A. § 2202a (d).

Public Roads, Private Roads, Rural Towns, and Plats. Several legislative changes will affect the work of land use officials, clerks, and enforcement officers:

- A definition of “public road” was added to Chapter 117 of Title 24, which includes class 1, 2, or 3 town highways as defined in 19 V.S.A. § 302(a). The law also provides that a town can include, at its discretion, class 4 town highways in the definition of public road for planning purposes. 24 V.S.A. § 4303 (33).
- Due to recent residential mortgage requirement changes, the Federal National Mortgage Association (Fannie Mae) will purchase residential mortgages on the secondary market when a property is on a private road *only* if there is some agreement amongst property owners (including municipalities that have property on a private road) that border the road about how the road will be maintained. In the absence of an express agreement or requirement governing the maintenance of a private road (when more than one person enjoys a common benefit from a private road), each person or entity will contribute “ratably” (a term not defined in statute) to the cost of maintaining the private road, and have the right to bring a

civil action to enforce the ratable contribution. Towns are not required to make any changes to their land use regulations to address this change in the law. The continued maintenance of a private road should in most cases be ensured by a private agreement or under the new law by property owners along the road. 19 V.S.A. §§ 2701, 2702.

- The Transportation Bill eliminates a perfunctory requirement that town clerks deliver a copy of their annual town report to the State Highway Board. They are still required to mail copies of the report to the State Library, Secretary of State, commissioners of the departments of Taxes, Children and Families, and Vermont Health Access, the state boards of Health and Education, and the Auditor of Accounts. (24 V.S.A. § 1173).
- To correct an action by the legislature in 2008 and bring full effect to the definition of “rural town” in 24 V.S.A. § 4303 (25), a town whose population is more than 2,500 but less than 5,000 may vote to be considered a “rural town” for purposes of requiring bylaws, bylaw amendments, or bylaw repeals be adopted by a vote of the town in accordance with 24 V.S.A. § 4442(c) (2). This is a welcome correction for many municipalities.
- Acceptable recordable survey plat reproduction processes and materials are now provided for in the law, where they hadn’t been before. These now include fixed-line photographic process on stable base polyester film, pigment ink on stable base polyester film, or linen tracing cloth. These requirements will be in effect until July 1, 2013, unless the legislature takes further action. 27 V.S.A. § 1403 (b) (8).

Glebe lands were originally granted to municipalities under the authority of the British government for use by the Church of England. These lands still exist in many municipalities, and selectboards manage the lease of these lands and place the rents into the municipal treasury. The legislature caught up to well established case law and repealed statutes addressing glebe lands that were declared unconstitutional by the Vermont Supreme Court in *Mikell v. Town of Williston*, 129 Vt. 586 (1971) The effect of the repeal of 24 V.S.A. §§ 2404 and 2405 is that municipalities will no longer be confused by the unconstitutional requirement to pay rents to religious organizations. Another repealed statute that will have less of an effect on the operation of municipal government is 24 V.S.A. § 1769, which includes an outdated statute addressing poor relief,.

Note that it is always good practice to check for any new legislation on the issue you are researching from the close of the legislature’s session (usually late May) to the publishing of the next annual legislative supplement (usually January). This is especially true when accessing the online version of the statutes at the Vermont Legislative Bill Tracking System, www.leg.state.vt.us/database/status/status.cfm.

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