



Permissible Regulations

Chapter 117 - a Regulatory Smorgasbord

Chapter 117 is broadly enabling, offering a variety of regulatory and non-regulatory options for municipal plan implementation. The types of regulatory techniques authorized by statute for local consideration were expanded under Act 115 to clearly allow innovative practices already used in Vermont, and to clarify the application of longstanding zoning and subdivision provisions. Of particular note:

- **Non-regulatory, as well as regulatory, plan implementation options are now specifically authorized in Chapter 117.** These are generally authorized under §§4401-4403. Bylaws are more specifically addressed under Subchapter 7; non-regulatory tools are covered under Subchapter 8. In some cases non-regulatory tools may be a more appropriate - or politically acceptable - means of implementing the municipal plan. Often a combination of regulatory and non-regulatory techniques is applied at the local level to most effectively manage growth and development.
- **Municipalities are allowed, but not required, to adopt any or all of the techniques identified, as well as "...any other tools not specifically listed"** [§4410]. Chapter 117 now broadly authorizes municipalities to consider - with

some limitations - a wide variety of regulatory tools to implement municipal plans, including techniques not specifically identified in statutes. No adopted bylaw, however, may directly conflict with statutory protections and limitations [§§4412, 4413]. For more information on these (see *Bulletin #5 Required Provisions & Limitations*).

- **All plan implementation techniques must be in conformance with an adopted municipal plan, and be adopted for purposes established under Chapter 117's "planning goals"** (found in §4302). The municipal plan provides the foundation in public policy for enacting local land use regulations. Accordingly, an adopted municipal plan must be in effect in order to adopt or amend bylaws and other implementation tools - including flood hazard area and shoreland regulations that, prior to Act 115, could be adopted without a plan. State planning goals - if addressed in the municipal plan (as required for plan approval by the regional planning commission) - should not require additional consideration in bylaw development. For more information on bylaw adoption, and related conformity requirements (see *Bulletin #2 Conformance with the Municipal Plan and Bulletin #4 Bylaw Preparation & Adoption*).
- **Chapter 117 now specifically authorizes both "freestanding" and "unified" development bylaws.** Freestanding, or special,

bylaws include regulations that apply to development only within a designated area of the municipality - for example a flood hazard or shoreland area - as identified in the municipal plan [§4424]. Also, site plan regulations may now be adopted separately from zoning regulations [§4416]. A "unified" bylaw is a single set of integrated land use regulations that, at a minimum, includes both zoning and subdivision regulations [§4419]. The intent of these statutory authorizations was to provide options for both smaller communities which do not need or want extensive regulations, and for larger communities that want to integrate and streamline more comprehensive land use regulations.

Related Considerations

Given the variety of options available, some considerations - for both municipal plan and bylaw development - are in order:

- **Is the proposed regulation clearly based on stated public goals, policies and objectives?** To the extent feasible, the selected purpose and method of implementation should be clearly identified in the implementation section of the municipal plan. For example, if zoning district changes are proposed, the purpose of such changes should be clearly stated in the plan and shown, at least in a general manner, on the accompanying land

use map. Sometimes a plan amendment may be necessary to support a proposed regulation. Plan and bylaw amendment processes can occur simultaneously as long as the statutory requirements for each are met. Purpose statements in both the plan and bylaw are especially important to clearly establish the connection - or "nexus"- between public policy objectives and implementing regulations.

- **Which regulatory tool, or tools, will be most effective in accomplishing municipal plan goals and objectives?** Often several techniques may be appropriate and applied in combination under zoning, site plan and/or subdivision regulations. It's important though not to overdo it - overregulation may result in unnecessarily complicated, duplicative or even conflicting development review processes. For local officials and boards, these may be difficult to coordinate, administer and enforce and, for applicants, may be confusing, frustrating, time consuming and costly.
- **Does the local capacity and technical expertise exist to effectively administer and enforce the regulation?** Generally, the more complicated the bylaw, the more difficult it

will be to administer and enforce. Rapidly developing and developed municipalities often have professional staff to help administer complex land use regulations. In the absence of full-time staff, a more basic set of regulations may be appropriate. Even small, rural communities, however, can require an independent technical review of an application - paid for by the applicant - to assist in their review process. [§4440 (d)].

- **Is the proposed regulation legally defensible?** Municipalities, particularly under recent Chapter 117 amendments, are authorized to adopt a wide range of bylaw provisions. Options include taking a conservative approach -using regulatory techniques that have withstood court challenges - and/or adopting more innovative regulations that have not yet been subject to legal challenge. Related considerations, beyond the legal costs, include political acceptability and basic principles of equity and fairness. To effectively withstand legal challenge, a bylaw provision should further a clearly stated public purpose (as supported by the municipal plan); not conflict with Chapter 117 prohibitions, limitations and procedural requirements;

and, most importantly, not violate basic constitutional protections afforded applicants and property owners with regard to due process, equal protection under the law and reasonable use of property. For these reasons, it's always a good idea to run proposed bylaw language by your municipal attorney.

Regulatory Options

A brief summary of regulatory plan implementation options identified under Chapter 117, including highlighted Act 115 revisions, is provided in the accompanying table. These types of regulations are administered locally by "Appropriate Municipal Panels" - Planning Commissions, Boards of Adjustment or Development Review Boards - as specified in the bylaw. *Related bulletins in this series include Bulletin #8 Development Review and Bulletin #10 Appropriate Municipal Panels.*

For more information regarding regulatory options that may be appropriate for use in your community, contact your regional planning commission, the Vermont Department of Housing and Community Affairs, and/or the Vermont League of Cities and Towns.

Vermont Land Use Education and Training Collaborative

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

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

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Chapter 117 Plan Implementation: Regulatory Options

Purpose & Authority [§4401]

General authorization for both regulatory and non-regulatory plan implementation tools requires that these be in conformance with the municipal plan and be adopted for purposes set forth under state planning goals [§4302].

Bylaws & Regulatory Tools [§4402]

A brief listing of regulatory tools, described more fully in Subchapter 7 (Note: §4403 lists non-regulatory options, as described in Subchapter 8).

Regulatory Implementation [§4410]

A broadly enabling provision: "*In its bylaws a municipality may utilize any or all of the tools provided in this subchapter and any other regulatory tools or methods not specifically listed.*"

Zoning Bylaws [§4411]

Generally enables the adoption of zoning bylaws that conform to municipal plans, to include regulations that govern the type and density of development allowed within designated zoning districts.

Required Provisions & Prohibited Effects [§4412]& Limitations [§4413]

These sections of statute include mandatory bylaw provisions, and also statutory prohibitions and limitations (e.g., with regard to affordable housing, home occupations, child care facilities and public facilities and utilities) that were substantially amended under Act 115 (see *Bulletin #5 Required Provisions & Limitations*).

Zoning; Permissible Types of Regulations[§4414]

This section includes specific types of tools or provisions, that may be considered under zoning (and/or other bylaws as specified), including:

- **Zoning Districts** - to provide for an expanded list of suggested zoning district designations that includes "downtown, village and new town center districts," (which may or may not be tied to state designated districts under the Downtown Development Act, 24 V.S.A. Chapter

76A); agricultural, rural residential, forest, and recreational districts; airport hazard areas; shorelands; design review and historic districts; and overlay districts.

- **Conditional Use Review** - to consider the impact of proposed development on the capacity of public facilities, the character of the area (as defined in the plan and bylaw), traffic, bylaws and ordinances, and utilization of energy resources, and other standards specified in the bylaws, such as Act 250 criteria. This also includes a new statutory standard for review, requiring findings of no "undue adverse effect."
- **Parking & Loading Facilities** - to regulate parking off-street by district and/or use, as specified in the bylaw; may include provisions for location, design, access, landscaping and screening.
- **Performance Standards** - to specify acceptable standards of performance, including levels of operation (e.g., with regard to noise, vibration, smoke, dust, glare, hazards, etc.) as an alternative or supplement to the listing of specific allowed uses.
- **Access to Renewable Energy Sources** - to encourage energy conservation and protect and provide access to renewable energy sources under zoning and subdivision regulations.
- **Inclusionary Zoning** - to require that a certain percentage of housing units in a proposed subdivision or planned unit development are "affordable" units as defined and specified in the bylaw, based on plan policies, housing needs assessments, and available incentives.
- **Waivers** - to reduce zoning dimensional requirements, according to a process specified in the bylaw (which may provide an alternative to variance appeals)
- **Stormwater Management** - to implement stormwater management that is consistent with VANR program requirements.

- **Time-share projects** - to allow for the review of time-share projects consisting of five or more time-share estates or licenses.
- **Archaeological Resources** - to regulate and further protect archaeological sites and areas that may contain significant archaeological sites.
- **Wireless Telecommunications Facilities** - to regulate wireless facilities (cell towers) and ancillary improvements including decommissioning in accordance with federal law.

Interim Bylaws [§4415]

The Legislative Body of a municipality may adopt interim land use regulations, following public hearing, for all or part of the municipality for a period of two years (with the option for a one-year extension) - if the municipality is conducting studies, or has held or will hold a public hearing to consider a bylaw, plan or amendment - in accordance with related statutory requirements.

Site Plan Review [§4416]

Site plan review provisions may be adopted under zoning, or as a separate bylaw, to allow for the review and approval of site layout and design for all but single- and two-family dwellings. Conditions may be imposed with respect to parking; traffic access, and circulation for pedestrians and vehicles; landscaping and screening; the protection and utilization of renewable energy resources; exterior lighting; the size, location, design of signs; and other matters specified in the bylaw. Site plan review is now subject to the same 45-day decision period as other development review processes (see *Bulletin #8*).

Planned Unit Development [§4417]

Planned Unit Development (PUD) provisions allow for flexibility in the application of zoning requirements to a particular project. These were substantially amended under Act 115. The

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intent of such provisions, which are recommended but not required, were expanded to encourage compact, pedestrian-oriented mixed use development, and to provide for open space protection (e.g., through clustering), efficient use of public facilities and services, energy efficient development, and to meet other plan objectives (e.g., affordable housing). Other major changes under Act 115 include:

- The elimination of separate planned residential development provisions in statute (planned residential development is considered one type of PUD).
- The ability to mandate PUD review for development within specified zoning districts, or of a particular type or magnitude, as specified in the bylaw.
- Statutory requirements that PUD provisions include a statement of purpose that conforms to the municipal plan, a coordinated review process (e.g., with subdivision and/or conditional use review), associated application requirements and standards for review - which may vary the applicable density or intensity of development, and which require related infrastructure improvements or incorporate adopted impact fees by reference.
- The elimination of statutory density bonus limits (e.g., 50% for affordable housing development), however such bonuses may be allowed as specified in the bylaw.
- A requirement that any standards for the reservation or dedication of common land or open space include provisions for determining the amount and location of land to be reserved, and for ensuring its improvement and maintenance.
- A requirement that any PUD approval be based on findings that the PUD is in conformance with the municipal plan and satisfies other bylaw requirements.

Subdivision Bylaws [§§4418]

Subdivision regulations are intended to regulate the pattern of development (e.g., the layout of lots) and supporting infrastructure. Chapter 117 as amend-

ed now requires that subdivision regulations include standards for the design and configuration of parcel boundaries, the location of associated improvements to achieve desired settlement patterns, and for the protection of natural and cultural features and the preservation of open space, in accordance with the municipal plan.

Unified Development Bylaws [§4419]

Chapter 117, as amended, specifically provides for the adoption of a unified bylaw that, at minimum, consolidates zoning and subdivision regulations. For purposes of determining the Act 250 jurisdiction (which differs for municipalities that have only zoning or subdivision regulations), a municipality with a unified bylaw is deemed to have both zoning and subdivision regulations in effect. For clarification, this should be noted in the bylaw.

Local Act 250 Review [§4420]

Local Act 250 review allows only a Development Review Board to review Act 250 applications and determine whether or not a proposed project will conform to the municipal plan or cause an unreasonable burden on the municipality to provide educational, municipal or governmental services. In order to adopt local Act 250 review, a municipality must have adopted a plan, zoning and subdivision regulations, and the Municipal Administrative Procedure Act (MAPA). Related statutory provisions, including Act 250 definitions for "subdivision" and "development, must be incorporated in the bylaw. Board findings become presumptions in state Act 250 proceedings and cannot be appealed to court.

Official Map [§4421]

An "official map" - not to be confused with the zoning map - identifies the locations of planned public improvements (e.g., school sites or road rights-of-way) to allow the municipality to acquire land prior to development through dedication or purchase, and for consideration in the review of new development. Under Chapter 117

as amended, the bylaw may provide for conditional use review of development to ensure that proposed development is compatible with the official map. If a project is denied, the Legislative Body has 120 days to institute acquisition proceedings.

Adequate Public Facilities; Phasing [§4422]

This provision was added under Act 115 to specifically enable bylaw requirements for the phasing of development in relation to the capacity of existing and planned community facilities and services, in accordance with an adopted capital budget and program.

Transfer of Development Rights [§4423]

These provisions of Chapter 117 allow for the transfer of development densities from "sending" to "receiving" areas as designated in the bylaw. "TDR" provisions may be used to promote higher densities of development in urban, village and other growth centers with the infrastructure to support higher densities, and to limit development, with some potential compensation to landowners, in areas to be conserved or protected.

Freestanding Bylaws [§4424]

Freestanding bylaws are separate bylaws that apply only to certain areas of a municipality - such as flood plain or shoreland areas - as designated in the municipal plan. They may be adopted in lieu of more comprehensive regulations to address a particular area of concern.

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