

VERMONT LEAGUE OF CITIES AND TOWNS

# HANDBOOK FOR VERMONT TOWN OFFICERS



*Serving and  
Strengthening  
Vermont Local  
Governments*

An Overview of the Duties and Responsibilities  
of Vermont Local Government Positions

*Serving and Strengthening Vermont Local Governments*

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An Overview of the Duties and Responsibilities  
of Vermont Local Government Positions



July 2014

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.



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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# HANDBOOK FOR VERMONT TOWN OFFICERS

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## INTRODUCTION

This newly revised *Handbook for Vermont Town Officers* provides a complete review of the duties of Vermont's elected and appointed town officials. Because separate handbooks exist for selectboards, town clerks, treasurers, auditors, collectors of delinquent taxes, listers, and zoning officials, the chapters discussing these officials and their responsibilities provide brief overviews.

Many of the duties and functions of local government officials are defined by statutory and case law or municipal charters. However, there are many areas in which the law does not provide guidance. Thus, this handbook discusses the legal requirements of a position as well as some of the practical requirements and practices that have evolved over the years.

Reasonable efforts have been made to ensure that the information provided in this publication is accurate and complete. 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.

We hope that this handbook will be a source of information not only for those who are currently holding elective or appointive offices, and those who might be interested in holding them in the future, but also for citizens interested in these local government offices.

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*July 2014*



**Incompatible Offices.** There are a number of statutes that regulate whether a public official may hold more than one office. This chart provides an easy reference to assist you in determining whether two offices are incompatible to hold.

## CHART OF INCOMPATIBLE OFFICES

<b>Can a Person Hold Both of These Offices?</b>	<b>Auditor</b>	<b>Selectperson</b>	<b>School Director</b>	<b>Town Manager</b>	<b>Town Treasurer</b>	<b>Election Official &amp; Candidate (Australian Ballot)</b>	<b>Election Official &amp; Candidate (Not Australian Ballot)</b>	<b>School District Employee<sup>1</sup></b>	<b>Spouse</b>
<b>Auditor</b>	—	No	No	No	No	No, If Opposed	No	Yes	3
<b>Selectperson</b>	No	—	Yes	No	No	No	No	Yes	
<b>School Director</b>	No	Yes	—	No	No	No, If Opposed	No	No	
<b>Town Manager</b>	No	No	No	—	No	No	No	Yes	
<b>Town Treasurer</b>	No	No	No	No	—	No, If Opposed	No	Yes	
<b>Town Clerk</b>	No	Yes	Yes	No	Yes	Yes	No	Yes	
<b>Assistant Town Clerk</b>	No	Yes	Yes	No	Depends <sup>2</sup>	N/A	N/A	Yes	
<b>Town Agent</b>	Yes	No	No	No	Yes	No, If Opposed	No	Yes	
<b>First Constable</b>	No	No	No	No	Yes	Yes	No	Yes	
<b>Road Commissioner</b>	No	Yes	Yes	No	Yes	No, If Opposed	No	Yes	
<b>Cemetery Commissioner</b>	Yes	Yes	Yes	No	No	No, If Opposed	No	Yes	
<b>Trustee of Public Funds</b>	No	Yes	Yes	No	Yes	No, If Opposed	No	Yes	
<b>Lister</b>	Yes	No	Yes	No	Yes	No, If Opposed	No	Yes	
<b>Assessor</b>	Yes	No	Yes	No	Yes	Yes	Yes	Yes	
<b>Tax Collector, Current</b>	No	No	No	Yes	Yes	No, If Opposed	No	Yes	
<b>Tax Collector, Delinquent</b>	No	No	No	Yes	Yes	No, If Opposed	No	Yes	
<b>Trustee of Public Funds</b>	No	Yes	Yes	No	Yes	No, If Opposed	No	Yes	
<b>Grand Juror</b>	Yes	Yes	Yes	No	Yes	No	No	Yes	
<b>Inspector of Elections</b>	Yes	Yes	Yes	No	Yes	Yes	No	Yes	
<b>Justice of the Peace</b>	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 system commissioner, sewer disposal commissioner, first constable, road commissioner, collector of current or delinquent taxes, or town district school director, or any person who assists any of these officers may not be an auditor. 17 V.S.A. § 2647.

## CHAPTER 1. TOWN OFFICERS GENERALLY

**Becoming a town official.** Town officers may be either appointed or elected, depending on the position, and depending on the particular situation. Terms of office vary according to the position, and may be only until the next annual meeting or for a particular number of years.

**The following officers are elected at town meeting and serve until the next annual meeting**  
(unless otherwise provided by law):

- **Agent** 17 V.S.A. § 2646(11).
- **Agent to Sell Real Estate** (if the town chooses to elect, otherwise may be appointed by the selectboard). 24 V.S.A. § 1061(d).
- **Auditors** (three, for three-year terms, unless the town has voted to eliminate the office under 17 V.S.A. § 2651b). 17 V.S.A. §§ 2646(6), 2649.
- **Cemetery Commissioners** (three to five, if the town so orders). 17 V.S.A. § 2646(14); 18 V.S.A. § 5373. See 18 V.S.A. § 5374 for terms of office.
- **Clerk** (for a one-year term unless the town votes to make it a three-year term). 17 V.S.A. § 2646(2).
- **Collector of Delinquent Taxes** (if the town so orders; for a one-year term unless the voters choose to make it a three-year term; elected unless the town votes to appoint under 17 V.S.A. § 2651d). 17 V.S.A. § 2646(9).
- **Constable, First** (for a one-year term, unless the town votes for a two-year term; elected unless the town authorizes the selectboard to appoint under 17 V.S.A. § 2651a). 17 V.S.A. § 2646(7).
- **Constable, Second** (only if the town chooses to have a second constable; for a one-year term unless the town voted for a two-year term; elected unless the town authorizes the selectboard to appoint under 17 V.S.A. § 2651a). 17 V.S.A. § 2646(7).
- **Grand Juror(s)** (one or more). 17 V.S.A. § 2646(10).
- **Listers** (one, for three-year term, unless the town has voted to eliminate the office under 17 V.S.A. § 2651c; the town may vote to add two additional listers for one-year terms). 17 V.S.A. §§ 2646(5), 2650(a).
- **Moderator**. 17 V.S.A. § 2646(1).
- **Road Commissioner(s)** (one or two, if the town so orders, otherwise to be appointed by the selectboard under 17 V.S.A. § 2651). 17 V.S.A. § 2646(16). 17 V.S.A. § 2649(b).
- **Selectpersons** (three, for three-year terms; the town may vote to add two additional selectpersons for two-year terms under 17 V.S.A. § 2650). 17 V.S.A. §§ 2646(4), 2649.
- **Treasurer** (for a one-year term unless the voters choose to make it a three-year term). 17 V.S.A. § 2646(3).
- **Trustee of Public Funds** (if the town so orders). 17 V.S.A. § 2646(12).
- **Trustee of Public Money** (only if the town retains surplus funds of the U.S. received under the Act of 1836). 17 V.S.A. § 2646(13).
- **Water Commissioners** (three, unless the voters elect additional selectboard members, in which case the number of water commissioners shall, at the discretion of the selectboard, be the same as the number of selectboard members; otherwise to be appointed by the selectboard under 17 V.S.A. § 2651). 17 V.S.A. § 2646 (17). 17 V.S.A. § 2649(c).

## CHAPTER 1. TOWN OFFICERS GENERALLY

### The following local officials are appointed by the legislative body:

- **Agent to Sell Real Estate** (if the voters have not elected one). 24 V.S.A. § 1061(d).
- **Appropriate Municipal Panels members** (Development Review Board five to nine, Zoning Board of Adjustment three to nine). 24 V.S.A. § 4460(b).
- **Building Inspector; Deputy Inspector** (if the town has adopted a building code). 24 V.S.A. § 3102.
- **Collector of Current Taxes.** 24 V.S.A. § 1236(10), 32 V.S.A. § 4791, 24 V.S.A. § 1529.
- **Conservation Commission members** (if the town votes to create such a commission; no fewer than three, no more than nine members for four-year terms). 24 V.S.A. §§ 4501, 4502.
- **Constable, First** (if the town has authorized the selectboard to appoint, otherwise elected; for a one-year term unless the town votes for a two-year term). 17 V.S.A. § 2646(7), 2651a.
- **Constable, Second** (if the town has authorized the selectboard to appoint, otherwise elected; only if the town chooses to have a second constable; for a one-year term unless the town votes for a two-year term). 17 V.S.A. § 2646(7), 2651a.
- **Emergency Management Director.** 20 V.S.A. § 6(a).
- **Energy Coordinator** (selectboard determines length of term) 24 V.S.A. § 1131(a).
- **Fence Viewers** (three; serves until successors are appointed may be appointed by the selectboard). 24 V.S.A. § 871(1).
- **Fire Warden** (appointed for a five-year term, or until a successor is appointed, by the state commissioner of forests, parks and recreation with the approval of the selectboard). 10 V.S.A. § 2641(a).
- **Health Officer** (appointed for a three-year term, and until a successor is appointed, by state health commissioner upon recommendation of the selectboard). 18 V.S.A. §§ 601(a), 605.
- **Inspector(s) of Lumber, Shingles and Wood** (one or more may be appointed by the selectboard; serves until successors are appointed). 24 V.S.A. § 871(3).
- **Municipal Manager** (if the manager system has been adopted by the electorate; residency not required). 24 V.S.A. § 1232.
- **Planning Commission members** (three to nine, for terms of one to four years unless the voters have chosen to elect). 24 V.S.A. §§ 4322, 4323.
- **Poundkeeper** (may be appointed by the selectboard; residency not required) 24 V.S.A. § 871(2).
- **Representative on Regional Planning Commission** (selectboard determines length of term in accordance with Regional Planning Commission's charter and bylaws). 24 V.S.A. § 4343.
- **Road Commissioner(s)** (one or two, if the town has not voted to elect). 17 V.S.A. § 2651(a).
- **Service Officer** (appointed on or before April 15 each year). 33 V.S.A. § 2102(a).
- **Sewer Commissioners** (three to seven, for four-year terms, if the selectboard chooses to appoint as a separate body). 24 V.S.A. § 3506.
- **Tree Warden.** 24 V.S.A. § 871.
- **Water Commissioners** (three to five, if the town has not voted to elect). 17 V.S.A. § 2651(b).
- **Weigher(s) of Coal** (one or more may be appointed by the selectboard; serves until successors are appointed). 24 V.S.A. § 871(4).
- **Zoning Administrative Officer** (Zoning Administrator) (appointed for a three-year term by the selectboard after nomination by the planning commission). 24 V.S.A. § 4448(a).

## CHAPTER 1. TOWN OFFICERS GENERALLY

**Filling Vacancies.** When there is a vacancy in an office, the selectboard must fill the vacancy “forthwith” on a temporary basis until an annual or special meeting can be held, at which time the vacancy is filled. 24 V.S.A. §§ 962, 963. An office becomes vacant if the town officer resigns, moves out of town, dies, or becomes insane. 24 V.S.A. § 961.

When an office becomes vacant, the selectboard is required to post a notice of the vacancy in at least two public places in the town, and in or near the town clerk’s office, within ten days of the vacancy. 24 V.S.A. § 961. The selectboard may fill the vacancy prior to posting notice of the vacancy, but the notice informs the members of the public that the vacancy exists so that they have an opportunity to petition for a special election to fill the position and lets them know that there will be a change in leadership within the community. If no petition is filed, the selectboard’s appointee may remain in office until the next annual meeting or until a special meeting is called for the purpose of electing the official. 24 V.S.A. § 963.

Another way in which a vacancy may occur is if no one is elected to a position at an annual or special meeting. In that case, the selectboard must appoint a voter to fill the office until the next annual meeting. 17 V.S.A. § 2682(d).

When an elected town office is vacant, the selectpersons shall appoint to fill the vacancy until there is an election. If there are vacancies in a majority of the board of selectpersons at the same time, vacancies in offices are filled by a special town meeting. If no selectpersons are in office, the Secretary of State must call a special election to fill the vacancies. 24 V.S.A. § 963.

**Recall/Rescission/Impeachment of Elected and Appointed Officials.** There is no law that authorizes either the voters or the selectboard to remove elected public officials under any circumstances. **This means that even if an official proves incompetent or dangerous to the public, there is no recourse except to fail to reelect him or her when his or her term expires.**

Note, however, that a selectboard may designate a person to perform the duties of a public official whose duties have been suspended as a condition of release pending trial for larceny or embezzlement. 24 V.S.A. § 961(c). Some municipal charters may also contain provisions for recall of elected officials. In addition, in certain extreme cases, a bonded official might lose his or her office if his or her bond is insufficient or revoked. See 24 V.S.A. § 832.

In the case of **appointed** officials, the selectboard generally has authority to remove an official whom it has appointed to a position. However, many statutes require finding of “just cause,” giving public notice, and holding a hearing before an appointed official may be removed by the board. For example, the selectboard may remove the town manager by a majority vote of the board, but only for “cause.” 24 V.S.A. § 1233. The selectboard may also remove appointed road or water commissioners for “just cause” and after “due notice and hearing.” 17 V.S.A. § 2651(b). An appointed member of the planning commission may be removed “at any time by unanimous vote” (24 V.S.A. § 4323(a)), and a member of the zoning board may be removed for cause, upon written charges and after a hearing (24 V.S.A. § 4460 (c)). A building inspector may be removed by the selectboard by majority vote (24 V.S.A. § 3102), and the administrative officer (zoning administrator) may be removed for cause by the selectboard, after consultation with the planning commission (24 V.S.A. § 4448(a)).

**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 conditioned on the faithful performance of his or her duties. **The officers who must give bond are the constable, road commissioner, collector of taxes, treasurer, assistant treasurer, clerk, and any other officer or employee of the town who has authority to receive or disburse town funds.** 24 V.S.A. §§ 832, 1234. The bonds “shall be in sufficient sums and with sufficient sureties as prescribed and approved by the selectboard.” 24 V.S.A. § 832.

## CHAPTER 1. TOWN OFFICERS GENERALLY

However, all bonds required of these officers must be paid for by the municipality (24 V.S.A. § 835), so as a practical matter, the selectboard must balance the amount of the bond it considers necessary for a particular position with the town's ability to pay for it.

If conditions change during the course of an officer's term, the selectboard may, at any time, require by written order the officer to provide an additional bond if it considers the existing bond to be insufficient. 24 V.S.A. § 832. When a bond is set by the selectboard and provided by an officer, the selectboard must file such bond in the office of the town clerk for recording in a book kept for that purpose. 24 V.S.A. § 833.

The purpose of the bonding requirement is to protect the municipality from the possible wrongdoing or misappropriation of funds by 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 selectboard is not limited by statute as to the amounts in which the bonds must be set, so that the selectboard may exercise its discretion and set a bond for as little as one dollar. By law, the selectboard also may exercise its discretion when it sets the surety on the bond; however, 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 is 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 the town 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 an officer until the office is "vacated" by the selectboard upon the officer's refusal to execute a bond to its satisfaction.

## CHAPTER 2. AGENT

### *Roles and Responsibilities*

**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 an interest. Instead, 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).**

**The fact that a town agent is elected does not remove the authority of the selectboard to hire an attorney to represent the town, conduct litigation, and 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.**

- **The town agent to prosecute and defend suits is elected each year at the annual town meeting. 17 V.S.A. § 2646(11).**
- **The town agent may become involved with suits in which the town or the town school district is interested. 17 V.S.A. § 2646(11).**

At its annual meeting, a town chooses a town agent who serves until the next annual meeting and until a successor is chosen. 17 V.S.A. § 2646(11). The town agent is elected to prosecute and defend suits in which the town or town school district has an interest. 17 V.S.A. § 2646(11). Note that cities and villages elect municipal agents only if required by their charter. 17 V.S.A. § 2646; 24 V.S.A. § 1304.

In many communities, the town agent is an attorney. However, since there is no statutory provision providing for payment to the town agent for his or her service, there must be a clear understanding with the selectboard with respect to payment before a town agent who is also an attorney does any legal work on behalf of the municipality. See *Langdon v. Castleton*, 30 Vt. 285 (1858). For the same reason, the town agent who is a layperson and who helps to arrange legal services on behalf of the town has no authority to bind the town to pay for legal services. Accordingly, the town agent must work closely with the selectboard in the conduct of these responsibilities.

Not only does the town agent not have the authority to expend town funds by hiring an attorney without the selectboard's permission, the selectboard also retains the independent authority to settle suits brought against the town. *Cabot v. Britt*, 36 Vt. 349 (1863). Moreover, the Vermont Supreme Court has held that an agent who agrees prematurely to settle a suit, without the authority of the selectboard, may well become personally liable. *Clay v. Wright*, 44 Vt. 538 (1872).

Accordingly, the town agent's primary function is to act as an assistant to the selectboard in matters involving litigation. He or she may hire an attorney on behalf of the town, with the selectboard's permission, and may act as an intermediary, reporting to the selectboard on the course of litigation, and assisting the attorney when appropriate. As noted by the Vermont Supreme Court, "it has never been supposed that such town agent had any authority to originate suits in favor of the town, or to settle or compromise suits in which the town was interested, but that his duty consisted merely in conducting the litigation in its progress." *Cabot v. Britt*, 36 Vt. 349 (1863).

## CHAPTER 2. AGENT

Finally, the agent is bound, so long as he or she acts within his or her agency, to defend the interest of the principal, the town, above his or her own interest, which itself must give way if a conflict arises. *Judevine v. Town of Hardwick*, 49 Vt. 180 (1876). This means that the town agent must act in the interest of the town, and will not be permitted to personally benefit from his or her official duties (aside from reimbursement for services rendered to the town).

Note that the town grand juror also has authority to prosecute suits on behalf of the town. The difference between the duties of the grand juror and the town agent in providing legal assistance to the town is that the grand juror is involved in criminal cases while the town agent may be involved in civil disputes. 13 V.S.A. § 5504.

*Roles and Responsibilities*

- **The agent to sell (“convey”) real estate performs a very limited function in local government. If the town or town school district wishes, it may elect an agent to convey real estate. If the office becomes vacant, or if no one is elected to serve as agent to convey real estate, the selectboard may appoint someone to fill the position, and the certificate of appointment must be recorded by the town clerk. 24 V.S.A. § 1061(d). Of course, since decisions to convey real estate are made by the selectboard and by the voters, the agent’s only function is to execute the deeds on behalf of the town. 24 V.S.A. § 1061.**
- **If the selectboard wishes to convey real estate, it must post a notice of the terms of the proposed sale in at least three public places (one of which must be in or near the clerk’s office), and publish notice of the sale in a newspaper of general circulation in the town at least 30 days prior to the proposed sale. Unless a petition is filed by five percent of the voters to consider at a special or annual meeting whether such real estate will be sold, the land may be conveyed by the agent. 24 V.S.A. §§ 1061(a). If a petition is presented to the clerk within 30 days of the posting and publishing of the notice of sale, the property may be conveyed if the voters so authorize. 24 V.S.A. § 1061(a)(2).**
- **As an alternative, the selectboard may elect to have the voters decide whether the real estate should be conveyed at an annual or special meeting. If a majority of the voters approve the proposed conveyance, the property may be conveyed. 24 V.S.A. § 1061(b).**
- **The selectboard may sell property without having to post and publish the proposed sale if the conveyance (1) is directly related to the control, maintenance, construction, relocation, or abandonment of town highways; (2) is directly related to the control, maintenance, operation, improvement, or abandonment of a public water, sewer, or electric system; or (3) involves real estate used for housing or urban renewal projects. 24 V.S.A. § 1061(c).**



## CHAPTER 4. APPROPRIATE MUNICIPAL PANEL

### Roles and Responsibilities

An appropriate municipal panel 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). A municipality that has a municipal plan and zoning bylaws may choose to have either a development review board/planning commission or a zoning board of adjustment/planning commission model of development review. If a development review board is chosen, it assumes all development review functions formally exercised by a zoning board of adjustment as well as those otherwise exercised by the planning commission (such as approval, modification, or disapproval of plats and their development). If a development review board is chosen, a planning commission would only exercise its legislative functions (see Chapter 25). 24 V.S.A. § 4460 (a).

- All appropriate municipal panels must adopt rules of procedure and rules of ethics with respect to conflict of interest. All meetings of the panel are open to the public except deliberative or executive sessions. Any action of the panel requires a concurrence of a majority of the total number of members of the panel. 24 V.S.A. § 4461 (a). A planning commission that does not exercise development review functions may, but does not have to, adopt rules of procedure and rules of ethics with respect to conflict of interest. 24 V.S.A. § 4323 (b).
- An appropriate municipal panel may examine or cause to be examined any property maps, books, or records bearing upon the matters concerned in the proceeding. It may also require the attendance of any person having knowledge in the property. 24 V.S.A. § 4461(b).
- Appropriate municipal panels must allow persons wishing to obtain interested person status to establish that status and keep a written record of the name, address, and participation of each of these persons. 24 V.S.A. § 4461 (b). Appropriate municipal panels must make interested person determinations in appeals of decisions of administrative officers, but may decide not to in all other review hearings before them.
- After taking all evidence and closing a hearing, the appropriate municipal panel must issue a decision within 45 days. This decision may include reasonable conditions as permitted by the bylaw and state law. Decisions must be issued in writing, however minutes of the meeting may suffice, provided the factual bases and conclusions relating to the review standards are provided therein. 24 V.S.A. § 4464 (b).
- The development review board or zoning board of adjustment will hear appeals from decisions of the administrative officer (“zoning administrator”) and grant or deny variances. 24 V.S.A. §§ 4465, 4466, 4468.
- A legislative body or the voters may take steps to enable a development review board to hear applications for local Act 250 review of municipal impacts. If a development review board hears such an application, all applications under Act 250 jurisdiction would go through the local review process. The Act 250 criteria that the development review board considers are impacts on educational and municipal services and conformance with the town plan. 24 V.S.A. § 4420.

**Appointment and Removal.** The zoning board of adjustment or development review board may share membership with the planning commission. If the members of the planning commission are not also members of the zoning board of adjustment or development review board, the selectboard will appoint members. The legislative body decides how many members (between five and nine) will be on the development review board. A zoning board of adjustment may have between three and nine members. The legislative body must set the terms of office. Vacancies are filled by the legislative body of unexpired terms and upon expiration of such terms. 24 V.S.A. § 4460.

## CHAPTER 4. APPROPRIATE MUNICIPAL PANEL

Each member of a board of adjustment or a development review board may be removed for cause by the legislative body upon written charges and after public hearing. 24 V.S.A. § 4460 (c).

**Alternates.** A planning commission, development review board and zoning board of adjustment may have alternates. Alternates serve in situations when one or more members of the board are disqualified or are otherwise unable to serve. The legislative body establishes terms and appoints alternates to either a zoning board of adjustment or a development review board. 24 V.S.A. § 4460 (c).

For more information, please consult the Municipal Assistance Center's Technical Paper #1, *Making it Stick: the Art of Writing Effective Zoning Decisions*, and Technical Paper #3, *Creating a Development Review Board*. Another source of information is the *Essentials of Land Use Planning and Regulation*, and other publications available from the Vermont Planning Information Center, [www.vpic.info](http://www.vpic.info).

## CHAPTER 5. AUDITOR

### *Roles and Responsibilities*

**Town auditors play a vital role in preserving the democratic nature of Vermont's local government by ensuring that local officials are accountable for their expenditures of taxpayers' money. It is the auditor's job to review the accounts of local officials and report the findings directly to the taxpayers for review. Because this report is presented only days before town meeting, the statutory scheme envisions that if the taxpayers do not like what the auditors' report indicates about how the officials have spent the taxpayers' money, the officials will be voted out of office. Thus, it is the auditor's function to present an easy-to-understand picture of the town's finances to its citizens.**

- Each town must have three auditors, one of whom is elected each year for staggered three-year terms. 17 V.S.A. §§ 2646(6), 2649. Although there is no requirement for elected auditors to be certified public or professional accountants, or have knowledge of income and expense statements and balance sheets, it is recommended.
- A town may vote by ballot at its annual meeting to eliminate the office of auditor, in which case it must contract with a Vermont licensed certified public accountant to perform an annual financial audit of all town accounts. When the office of auditor is eliminated, the selectboard must assume all other duties of the office. 17 V.S.A. § 2651b.
- An auditor cannot also serve as town clerk, treasurer, selectperson, first constable, collector of current or delinquent taxes, trustee of public funds, town manager, road commissioner, water commissioner, sewer system commissioner, sewer disposal commissioner, cemetery commissioner or town district school director. A spouse of, or any person assisting any of these officers in the discharge of their duties, is also ineligible to hold office as auditor. 17 V.S.A. § 2647.
- The board of auditors compiles an annual report showing a detailed statement of the financial condition of the town's fiscal year. This report must include a classified summary of receipts and expenditures, a list of all outstanding orders and payables more than 30 days past due, a deficit if one exists, the receipts and disbursements of all trust funds in which the town has an interest, outstanding bonds, notes and orders of the town, and such other information as the town directs. 24 V.S.A. §§ 1683, 1684. The auditors must mail or otherwise distribute a copy of this report to every legal voter of the town at least ten days before the annual meeting. 24 V.S.A. § 1682(a). At the same time, copies required by 24 V.S.A. § 1173 and all surplus copies must be delivered to the town clerk before the first Tuesday in March. This mailing requirement helps avoid the need to publish the warning of the annual meeting in a newspaper. See 17 V.S.A. § 2641(b).
- The auditors must begin meeting at least 25 days before each annual town meeting to examine and correct the accounts of all town officers, as well as the accounts of all other persons who are authorized to draw money from the town treasurer, including elected and appointed officials who submit bills for expenses to the town for payment on a monthly or annual basis. This meeting must be noticed ten days in advance by posting or publication. 24 V.S.A. § 1681. Officers who refuse to provide this information to the auditors will not be eligible for reelection for the ensuing year. 24 V.S.A. § 1686(c).

For more information about the duties and functions of the auditor, please consult VLCT's *Handbook for Locally Elected Auditors* (2008). This handbook may be viewed (under "League Resources") or purchased (under "Marketplace") online at [www.vlct.org](http://www.vlct.org).

## CHAPTER 6. BUILDING INSPECTOR

### *Roles and Responsibilities*

**If a town wishes to adopt a building code in accordance with 24 V.S.A. § 3101, the selectboard must appoint a building inspector who is responsible for enforcing the building code. The building inspector must have experience in construction of various types of buildings. 24 V.S.A. § 3102. He or she is answerable to the legislative body of the municipality for all of his or her activities.**

- Those who wish to construct or alter buildings in a municipality that has adopted a building code must first obtain a building permit. 24 V.S.A. § 3107.
- A building permit must be issued only if the building inspector finds that the proposed construction or alteration conforms with the building code and local zoning. 24 V.S.A. § 3107.
- The building inspector brings enforcement actions against those who violate the building code. 24 V.S.A. § 3106.
- The building inspector examines buildings as they are being erected and investigates complaints of unsafe structures. 24 V.S.A. §§ 3108, 3113.
- Orders of the building inspector may be appealed to a board of arbitrators or to the district court. 24 V.S.A. §§ 3109, 3117.

**Appointment.** A building inspector and a deputy may be appointed and removed by a selectboard of a town, which may also determine their responsibilities and fix their compensation. 24 V.S.A. § 3102.

**Duties.** The building inspector enforces the local building code.

**The Building Code.** The selectboard may adopt a building code, which must be consistent with 24 V.S.A. Chapter 83, and which may regulate the construction, maintenance, repair and alteration of all buildings in the municipality with respect to the building materials, structural design, passageways, stairways, exits, heating systems, fire protection procedures and other matters reasonably necessary to protect the health, safety and welfare of the public (but excluding electrical installations, which are regulated under 26 V.S.A. Chapter 15). 24 V.S.A. § 3101.

The building code may only be adopted or amended by the selectboard after a public hearing is held for discussion of the code or changes, in accordance with 24 V.S.A. § 3105.

Three copies of the building code must be filed in the office of the building inspector and three copies with the town clerk for use by the public. 24 V.S.A. § 3103.

When a municipality has adopted a building code, no construction or alteration of a building may take place unless the owner or architect provides the building inspector with complete plans and specifications of the work to be done, and the inspector provides a certificate of permission, which includes site, materials, and building specifications. The inspector must provide this certificate once he or she is satisfied that the building will conform with the code and with local zoning requirements. A copy of the certificate is filed in the office of the building inspector. 24 V.S.A. § 3107.

The inspector must make a daily examination of buildings being erected or undergoing alterations, and must serve notice in writing upon contractors, owners, or architects of such buildings that he or she judges

## CHAPTER 6. BUILDING INSPECTOR

to be unsafe, either because of construction faults or the materials used in the construction. The building inspector must order such changes he or she judges necessary for public safety, and may order construction to halt until these changes are made. 24 V.S.A. § 3108. This order may be appealed to a board of arbitrators or to district court, either of which may overturn the ruling of the building inspector. 24 V.S.A. § 3109. When an appeal is taken under the provisions of section 3109, the judge who is hearing the appeal, or a committee appointed by him or her, will inquire into the facts of the case and make an appropriate order. 24 V.S.A. § 3111.

The building inspector must provide the legislative body a detailed report of his or her activities at least every six months. This report must include the number of certificates of permission granted and denied, and other information related to the performance of his or her duties. 24 V.S.A. § 3106.

The building inspector may call upon the town attorney to bring enforcement actions against those who violate the building code, and he or she may apply to the superior court for injunctions, when necessary. 24 V.S.A. § 3106.

If a report is made to a building inspector concerning an apparently unsafe building, the inspector, after examining it, must notify the owner as to its condition. If it appears that the building would be especially unsafe in case of fire, the inspector will deem it dangerous and may post a notice on the exterior of the building warning of its dangerous condition. Before noon the following day, the owner must begin the job of repair or removal, employing extra help if necessary. If needed to protect passersby, the inspector will order fencing to be erected around the site at the owner's expense. 24 V.S.A. §§ 3113, 3114.

If the owner of the building refuses to comply with the inspector's order, a survey of the premises will be conducted by an appointed board, and that board will make a written report to the owner or agent of the building. 24 V.S.A. § 3115.

If the report declares that the building is unsafe and the owner continues to refuse to take it down, the building inspector can order it taken down, with the costs constituting a lien upon the land. For each day that the owner continues in his or her refusal, he or she may be fined between \$10.00 and \$50.00. 24 V.S.A. § 3116.

An individual who has been ordered to take down a building declared unsafe by the building inspector may also appeal to a board of arbitrators or the district court for relief. 24 V.S.A. § 3117. However, the municipality can still recover the fine from the date of the original notice unless the arbitrators or the court annuls the order of the building inspector.

A superior court judge may restrain the construction, alteration, maintenance, or use of a building that is in violation of the local building code and may order its removal as a nuisance. 24 V.S.A. § 3119.

## CHAPTER 7. CEMETERY COMMISSIONER

### *Roles and Responsibilities*

**Generally, town cemetery matters are the responsibility of the selectboard. However, the voters may decide to put the town's public cemeteries under the charge of cemetery commissioners. The voters then elect a board of three or five cemetery commissioners for three- or five-year staggered terms, respectively. 18 V.S.A. § 5374. This board is responsible for the care and management of the town's cemeteries, which includes the following tasks:**

- The cemetery commission may grant and/or convey by deed lots in the cemetery and may make regulations governing the sale, price, and care of the lots. 18 V.S.A. §§ 5376, 5377.
- Cemetery commissioners may set aside a portion of the cemetery for the burial of indigent persons, and may make regulations for the use of this special area. 18 V.S.A. § 5375.
- Cemetery commissioners may maintain the public cemeteries and hire someone to perform this work. The expenses, not to exceed \$500 per year of town funds, may be paid by the commissioners drawing orders on the town treasurer. 18 V.S.A. § 5362.
- Cemetery commissioners may grant a temporary right-of-way over private land to reach a graveyard to which there is no public right-of-way. 18 V.S.A. § 5322.
- Cemetery commissioners must keep in repair the fence around a public burial ground. 18 V.S.A. § 5364.
- Cemetery commissioners must submit an annual report to the town auditors, including a detailed financial statement, a listing of the work of the commissioners, and the condition and needs of the cemetery. 18 V.S.A. §§ 5379, 5380.
- The cemetery commissioners (and not the selectboard) may appoint individuals to fill vacancies on the board until the next annual meeting, even if a majority of the positions on the commission are vacant. 18 V.S.A. § 5374.
- A cemetery commissioner may be fined \$400 for failure to keep a fence in repair after written notification of its disrepair, and may be fined \$200 for the willful neglect of his or her duties. 18 V.S.A. §§ 5363, 5364.

**Creation of a Board of Cemetery Commissioners.** When a town votes to place its public cemeteries under the charge of cemetery commissioners, it must elect a board of either three or five members. 18 V.S.A. § 5373.

When a five-person board of cemetery commissioners is first elected, one commissioner must be elected for a five-year term, a second for a four-year term, the third for a three-year term, and so on. When the term of each of these commissioners expires, his or her successor will be elected for a five-year term. A three-member board is elected for a three-year term, with staggered terms created in a similar manner as the five-member board. 18 V.S.A. § 5374. A cemetery commissioner may not also be an auditor or a town treasurer. 17 V.S.A. § 2647(a)(3).

If the town wishes to return the care and control of the cemeteries to the selectboard, it may vote to do so, at which time the terms of office of the commissioners will terminate. 18 V.S.A. § 5381.

## CHAPTER 7. CEMETERY COMMISSIONER

**Powers of the Board of Cemetery Commissioners.** Cemetery commissioners have all the powers, rights, and duties formerly exercised by the selectboard in regards to cemeteries. 18 V.S.A. § 5373. These duties include the following:

- **Care and management of cemeteries.** The board is responsible for the care and management of the cemeteries owned by the town. A town may vote such amounts of money as it deems “necessary for purchasing, holding and keeping in repair suitable grounds and other conveniences for burying the dead.” 18 V.S.A. § 5361. Specifically, in the case of unsightly weeds, unchecked growth of grass, or headstones displaced or in need of repair, the commissioners must make the necessary repairs and may draw orders not to exceed \$500 per year to pay for the expenses incurred. When a headstone or monument is to be replaced, the commissioners must notify relatives of the deceased, if known, of the date of removal and that the relative may claim the removed headstone or monument within 30 days after the date of the notice. 18 V.S.A. § 5362.
- **Keeping fences in repair.** Cemetery commissioners have a special obligation to keep the fences that surround public burial grounds in good repair. In fact, failure to repair such a fence within 20 days after receiving a written notice that a fence is out of repair could result in liability for the damage done as a result of the disrepair, plus a penalty of up to \$400. (The fine amount must be used to repair the fence, under the direction of a commissioner appointed by the court.) 18 V.S.A. §§ 5364, 5366.
- **Laying out, selling and conveying cemetery lots.** In addition to being responsible for the care and maintenance of public cemeteries, the commissioners are also charged with laying out, selling, and conveying cemetery lots. 18 V.S.A. § 5367. The commissioners are authorized to make all necessary bylaws and regulations concerning the burial grounds and the internment of the dead, so long as they are not inconsistent with law and do not restrain a person in the free exercise of his or her religion as to the burial of the dead. 18 V.S.A. § 5378. Such regulations must be recorded in the town clerk’s office. The board may also fix the prices of lots and make regulations as to the sale and care of the lots. 18 V.S.A. § 5377.

One board member, appointed by the cemetery commission for this purpose, may grant or convey cemetery lots in the name of the town. The deeds of these lots must be recorded in the office of the town clerk. The commissioners may also accept legacies, bequests, and gifts whose proceeds, along with the proceeds of any sales of lots, must be used to improve and embellish the grounds of the cemetery. 18 V.S.A. §§ 5376, 5377, 5382.

- **Managing proceeds of sale of lots.** The proceeds from the sale of lots must be paid into the town treasury, but are kept in a separate account, to be used solely for the care, maintenance, and improvement of the burial grounds. If the town so votes, the cemetery commission may also sell lots upon condition that the proceeds therefrom will be paid into the town treasury in trust, and the income thereof be expended in caring for such lots and the structures thereon. 18 V.S.A. § 5377.

Note that cemetery lots are exempt from property taxation. 32 V.S.A. § 3802(7).

- **Closing a cemetery.** When it is impractical to preserve a burial ground in a proper condition, the commissioners may cause the remains of the dead therein to be removed and interred in a more suitable public burial ground. 18 V.S.A. § 5369. If family members of the deceased are known to be living, such remains may not be removed until after 30 days notice of the intention to do so if the family members live in the state, or 60 days if they live out of state. The notice must be given personally or by registered mail. 18 V.S.A. § 5370. When the remains are removed, the board must cause suitable headstones or monuments to be erected in memory of the deceased, or to designate the place of internment. Contact the Vermont Department of Health any time a body is disinterred.

## CHAPTER 7. CEMETERY COMMISSIONER

- **Providing lots for the burial of indigent people.** The board of cemetery commissioners may set aside a portion of the public burial grounds as a place for the burial of individuals who cannot afford to purchase a lot. It may make all necessary regulations governing the granting of such lots and may set out paths and embellish this area of the burial grounds with appropriate trees, shrubs, and flowers. 18 V.S.A. § 5375. When an individual is buried who has no known estate and no suitable marker or gravestone erected at his or her grave within three years after burial, the legislative body may cause to be erected a suitable marker or headstone with the name of the deceased and the dates of his or her birth and death, if known. 18 V.S.A. § 5371.
- **Burial of the dead.** A sexton is an individual who cares for a cemetery, tomb, or receiving vault and who is employed by the cemetery commission. He or she must not permit burial or removal of remains until a certificate or permission is issued and presented to him or her. 18 V.S.A. § 5214. The certificate of permission shall state the time, place, and manner of the burial, entombment, or disposition. To remove a dead body from town where the death occurred, the certificate of permission must contain the essential facts as found in the death certificate and accompany the remains to its destination, and may be accepted as a permit for burial or entombment by a sexton or other person having the care of a cemetery. 18 V.S.A. § 5210.
- **Managing abandoned private burial grounds.** In certain circumstances, the cemetery commissioners may manage private burial grounds. When the use and care of a private burial ground has been abandoned and such ground becomes unsightly, or when headstones and monuments have been displaced, the board of cemetery commissioners may treat the graveyard as a public burial ground. To do so, however, the commissioners must receive a written request by three legally qualified voters of the town, and must publish a notice in a newspaper of general circulation in the town calling upon any person with an interest in the burial grounds to put it in proper condition within three months of the date of the notice. If the three months have expired and the cemetery remains in poor condition, the commissioners must treat it as though it were a public burial ground. 18 V.S.A. § 5321.
- **Issuing permits to cross private property to visit a burial ground.** Cemetery commissioners are authorized to issue a permit to temporarily cross over private property to an individual who wishes to have access to a graveyard that is on private property and to which there is no public right-of-way. The individual who desires such a permit must apply in writing to the commissioners, and must specify the reason for the request and the period of time for which the right is to be exercised. This individual must also notify the owner or occupier of the private property over which the right-of-way is desired. If the commissioners find that the request is reasonable, they may issue a permit for a temporary right of entry, designating the particular place and manner of entry. The owner or occupier of the land may recommend a place of crossing, which, if reasonable, must then be the place designated by the cemetery commissioners.

An owner or occupier of land who refuses to comply with a permit may be liable for reasonable attorney's fees and costs expended to enforce the permit. 18 V.S.A. § 5322.

- **Cemetery trust funds.** All monies received by a town in trust for cemetery purposes must be paid over to the town treasurer, unless directed otherwise by the donor, to be invested and reinvested. In towns that elect trustees of public funds the trustees shall be responsible for investing such moneys. 18 V.S.A. § 5384.
- **Making an annual report to the auditors.** Each year, the cemetery commissioners must submit to the town auditors a report including the condition and needs of the burial grounds under its control and a



## CHAPTER 7. CEMETERY COMMISSIONER

detailed statement of its receipts and expenditures and of the amount and disposition of the funds in its hands or subject to its control. 18 V.S.A. § 5379. The town auditors must audit the statement, file it in the office of the town clerk, and include it or a summary in the annual report.

- Cemetery commissioners who willfully neglect any of their statutory duties may be fined up to \$200 (unless other penalties are provided). 18 V.S.A. § 5363.

For more information see *Digging Deep - Unearthing the Mysteries of Burial and Cemetery Law* (2010) published by the Vermont Secretary of State's Office.

## CHAPTER 8. CLERK

### *Roles and Responsibilities*

**The municipal clerk plays a central role in the operation of local government, with duties that bring him or her into regular contact with the public. The clerk's statutory duties range from recording, preserving, and certifying public documents to administering oaths of office, complying with public information requests, posting notices on the town's bulletin board, running the local elections, maintaining the grand list, selling fish and game licenses, issuing marriage licenses, and licensing animals. The town clerk has many unofficial duties as well that vary from town to town. These duties may include acting as the custodian of ticket books for local civil ordinance enforcement, attending and taking minutes of selectboard meetings, acting as mail clerk for the town, and sending out the town's correspondence.**

- The clerk is elected from the legally qualified voters at annual town meeting for a one-year term unless the town votes to make the office a three-year term. 17 V.S.A. § 2646(2). The town clerk will also act as the school clerk unless otherwise voted. 16 V.S.A. § 425.
- Municipal clerks are compensated either by fees collected for performing their duties or by a salary in addition to or in lieu of fees. This salary is established by vote at town meeting or is set by the selectboard. 32 V.S.A. §§ 1224, 1401; 24 V.S.A. §§ 932, 933.
- The municipal clerk is an independently elected official, answerable only to the electorate. He or she may set the clerk's office hours and may appoint one or more assistant clerks who serve at the clerk's pleasure. 24 V.S.A. § 1170. Files and records maintained by the clerk must be available for public inspection upon proper request at all reasonable hours. 24 V.S.A. § 1165.
- The town clerk is a voting member of the board of civil authority and certifies the grand list. 17 V.S.A. § 2103(5); 24 V.S.A. § 801; 32 V.S.A. § 4151(c). The clerk has the power to administer oaths in all cases in which an oath is required. 24 V.S.A. § 1160. The clerk and the assistant clerk are ex officio notaries public. 24 V.S.A. § 441(b).
- The clerk must appoint at least one assistant clerk who holds office during the term of the clerk or until such appointment is revoked by the clerk. 24 V.S.A. § 1170. The assistant clerk is authorized to perform the recording and filing duties of the town clerk and to issue licenses and certified copies of records. In the absence, death, or disability of the town clerk, the assistant clerk is authorized to perform all other duties of the clerk. 24 V.S.A. § 1171.
- The clerk manages all of the town's public records, records all public documents, including maps, plats, mortgages, liens and records of land transactions, and forwards property transfer tax returns and tax money to the state.
- The clerk issues dog licenses, marriage licenses, fish and game licenses (if he or she wishes) and any other municipal license that might be required. 10 V.S.A. § 4254 (e)(1); 18 V.S.A. § 5131; 20 V.S.A. § 3581.
- The commissioner of the Department of Motor Vehicles may authorize the clerk to renew motor vehicle, snowmobile, or motorboat registrations. 23 V.S.A. § 6.

For more information about the duties and functions of the municipal clerk, please consult VLCT's *Handbook for Vermont Municipal Clerks* (2000). This handbook may be viewed (under "League Resources") or purchased (under "Marketplace") at [www.vlct.org](http://www.vlct.org).

## CHAPTER 9. COLLECTOR OF CURRENT TAXES

### *Roles and Responsibilities*

**In 2014, the state legislature removed the provision in state statute requiring towns to elect a collector of current taxes. Those persons that have been duly elected as collector of current taxes prior to this statutory change will continue to serve their term until the next annual town meeting.**

**Effective July 1, 2014, municipalities are no longer required to vote for a collector of current taxes. A town must vote to have either the municipal treasurer or the town manager, (if there is one,) assume the duties of collector of current taxes. 24 V.S.A. § 1236(10); 32 V.S.A. § 4791. If a town fails to vote either the treasurer or town manager as the collector of current taxes, then the constable automatically becomes the collector of taxes. 24 V.S.A. § 1529.**

**The individual who is responsible for the collection of current taxes has the following duties:**

- After the town and school budgets have been approved, the grand list prepared, and the tax rate set, the selectboard will draw up individual tax bills for each property owner for state, county, municipal, and school district taxes. The board must present this information to the tax collector along with a warrant to collect such taxes. 24 V.S.A. § 1521. The collector must provide the selectboard a receipt upon delivery of the tax bills, which the selectboard then gives to the town treasurer. 24 V.S.A. § 1522.
- At least 30 days before taxes are due as set by the voters, the tax collector must mail to each taxpayer at his or her last known address a notice stating the amount of his or her grand list, the tax rate, the amount of taxes due from him or her, and when the same are payable. 32 V.S.A. § 4772. A notice provided by the state tax commissioner, describing the homestead property tax adjustment, must be sent with each tax bill to taxpayers that own homesteads in town. 32 V.S.A. § 6065.
- If a prepayment discount is available, the tax notice must include information regarding the discount. 32 V.S.A. § 4772.
- If the municipality fails to set a tax due date, or if the notice is not mailed to the taxpayers at least 30 days prior to the due date, the taxes will be due 30 days from the mailing of the notice to the taxpayer. 32 V.S.A. § 4772.
- If the municipality has voted to give a discount (not to exceed four percent) for the prepayment of taxes, the collector may receive taxes in advance and may allow a discount upon taxes paid in advance of the date or dates fixed and at the rate fixed by such vote. 32 V.S.A. §§ 4773, 4774.
- Any overpayment of \$10.00 or less, paid by mail or electronic fund transfer, that is equal to the amount of taxes due without regard to the discount, shall be deposited by the collector into the general fund. The collector shall refund this overpayment if requested by the taxpayer within one year of payment. 32 V.S.A. § 4774.
- The collector of current taxes cannot force taxpayers to pay their taxes, but simply accepts voluntary payments and then turns those payments over to the town.
- If the treasurer collects current taxes, he or she is paid one percent of the amount collected, unless town votes another method of compensation. 32 V.S.A. § 1672. In contrast, the tax collector who is not a treasurer receives only those fees, commissions, or salary agreed to or voted by the town. 24 V.S.A. § 1530.

- *Note that the collector of current taxes is responsible for collecting only the current taxes for the municipality. This person may or may not also be elected the collector of delinquent taxes. Vermont statutes sometimes refer only to the “collector of taxes.” In such cases, unless there is*

## CHAPTER 9. COLLECTOR OF CURRENT TAXES

*reason to apply the provision to only one of the two tax collector offices, we find it prudent to assume that both tax collectors are covered by the statute.*

- *If a town votes to collect its taxes in installments, taxes will not be delinquent until after the final due date. However, if the town has voted to collect interest on installments, this interest will begin to accrue as soon as an installment payment is late, and should be collected by the collector of current taxes. 32 V.S.A. §§ 4873, 5136. A municipal charter may change the date when taxes are considered delinquent.*

The tax collector must pay to the treasurer all taxes collected. Annually on or before February 1, the collector must pay over all money collected to the treasuries to which they belong and must settle his or her accounts with the treasurer. If the collector refuses to do this, he or she shall be ineligible for reelection in the ensuing year. 24 V.S.A. § 1532. In addition, the collector of taxes must pay to the treasurer all of the money collected by him or her when requested to do so in writing by the selectboard. The collector must submit his or her tax book and list to the treasurer for inspection and computation. Failure to do so for ten days after such request shall result in a fine of \$100. 24 V.S.A. § 1531.

The tax collector may be personally liable for his or her failure to turn over a tax that has been collected. According to statute, a tax collector who unlawfully neglects to collect and pay over a tax delivered to him or her shall be accountable for the tax or arrearages to the treasurer, selectboard, trustees, or other person authorized to receive the tax. In such case, upon receipt of a petition from the director of the Vermont Department of Taxes' Division of Property Valuation and Review, such officers shall cite the collector to appear before a justice residing in an adjoining town to show cause why an "extent" (similar to an attachment) should not be issued against him or her for the arrearages and the costs of the proceedings. If the justice finds that the collector has not performed his or her duty, and if this decision is not appealed to superior court, then the justice shall issue an extent commanding the officer who serves it to collect the arrearages and costs from the collector's property. The appeal must be claimed within two hours after a judgment has been rendered. 32 V.S.A. §§ 4691-4693.

The tax collector is *not* liable, however, for mistakes, mischarges, or overcharges in the tax bill that was committed to him or her for collection. In addition, the tax collector shall be indemnified by the municipality for the damage that he or she suffers because of such errors in documents submitted to him or her. 32 V.S.A. §§ 4641, 4642.

If the tax collector removes from town, dies, or becomes disabled, or when his or her office expires, the collector or his or her guardian, administrator, or executor is required to lodge immediately with the treasurer of the municipality the tax bill that is uncollected and any moneys collected thereon. The tax bill will then be audited and reissued to the succeeding collector, who shall give a receipt for the tax bill and then complete the collection of the taxes. 32 V.S.A. §§ 4671, 4672.

If the tax collector is unable to fulfill the obligations of the office, from sickness or otherwise, and the taxes are uncollected on a tax bill, the selectboard may appoint a new tax collector. If a tax collector becomes unable, from sickness or otherwise, to discharge his or her duties, and taxes are uncollected on a tax bill, then the selectboard may certify such disability on the warrant for the collection of the taxes and appoint a person as collector and, in such certificate, authorize and direct the new collector to collect and pay over the taxes. 32 V.S.A. § 4674. When a town is without a tax collector, the selectboard may hire any qualified person to act as tax collector for the town. The person hired need not be a resident of the town and shall have the same power and be subject to the same duties and penalties as a duly elected collector of taxes for the town. 32 V.S.A. § 4799.

## CHAPTER 10. COLLECTOR OF DELINQUENT TAXES

### *Roles and Responsibilities*

**The collector of delinquent taxes plays a vital role in ensuring that property taxes owed to the town are paid by all taxpayers. It is the job of the collector of delinquent taxes to notify taxpayers when their taxes are overdue, to make arrangements for late payments, or to take formal collection actions, including conducting tax sales of the property, when necessary. It is the obligation of the collector of delinquent taxes to keep records of all delinquent accounts and to provide an accounting of these records to the locally elected auditors for inclusion in the annual report of the town.**

- The municipality may vote to elect a collector of delinquent taxes for a one-year or a three-year term (17 V.S.A. § 2646(9)), or vote to have its town manager collect its delinquent taxes (24 V.S.A. § 1236(10)). If the town does not indicate how it wants to have its taxes collected, the first constable automatically becomes the collector of current and delinquent taxes. 24 V.S.A. § 1529. If the town wants its taxes collected by a tax collector but fails to elect one, or if there is a vacancy in the office, the selectboard may appoint or hire a collector of delinquent taxes. 32 V.S.A. §§ 4674, 4799.
- As of July 1, 2014, a municipality may vote at an annual or special meeting to authorize the legislative body to appoint a collector of delinquent taxes, who may be the municipal treasurer. A collector of delinquent taxes that is appointed may be removed by the legislative body for just cause after notice and hearing. 17 V.S.A. § 2651d(a). When a municipality votes to authorize the legislative body to appoint a collector of delinquent taxes, the legislative body's authority to make such appointment shall remain in effect until the municipality rescinds that authority by the majority vote of the legal voters present and voting at an annual or special meeting, duly warned for that purpose. 17 V.S.A. § 2651d(b).
- A collector of delinquent taxes may not also be an auditor or a selectboard or school board member. Neither may the spouse of or any person assisting the collector of delinquent taxes serve as an auditor. 17 V.S.A. § 2647.
- Most collectors of delinquent taxes in Vermont are paid by the penalty collected on delinquent taxes. 32 V.S.A. § 1674(2). This penalty is usually eight percent of the amount of the tax, but it may be reduced or eliminated by the voters of a municipality. 32 V.S.A. § 1674(3). The voters may vote to pay the collector a salary or other compensation in lieu of the penalty, in which case the penalty must be turned over to the treasurer at least once a month. 24 V.S.A. § 1530. The collector may also waive the penalty. 32 V.S.A. § 1674(2).
- The collector must contact delinquent taxpayers to arrange for the payment of delinquent taxes plus penalties and interest. The collector should try to work out a payment schedule. He or she must keep accounts of every delinquent taxpayer, the amounts of principal, interest, and penalties owed, and payments made. Included with each notice of delinquent taxes sent to an owner of a homestead in town must be a notice, provided by the state tax commissioner, which describes the homestead property tax adjustment. 32 V.S.A. § 6065.
- At least every two months, and whenever demanded in writing by the selectboard, the collector must pay all collected taxes into the municipal treasury. Payments must be accompanied by a list of the taxpayers who paid, showing the amounts collected and the years in which the taxes were due. 32 V.S.A. § 4646. The collector must also direct the application of the payments received by indicating which accounts should be credited and how a particular payment must be allocated (principal/interest/penalty). 32 V.S.A. § 4647.

## CHAPTER 10. COLLECTOR OF DELINQUENT TAXES

- After the collector of delinquent taxes pays the taxes to the treasurer, the treasurer then issues a paycheck to the collector of delinquent taxes of the penalties collected, minus payments for FICA and income tax withholding.
- When necessary for the collection of taxes, the collector of delinquent taxes may conduct tax sales of property, bring an action at law, or use other methods to collect delinquent taxes for the town. The delinquent tax collector must get authorization from the selectboard prior to soliciting legal assistance. 32 V.S.A. § 5258.
- When the collector of delinquent taxes resigns or the term expires, he or she must immediately lodge with the treasurer the tax bill committed to him or her that remains uncollected (in whole or in part) along with any money collected. 32 V.S.A. § 4671.
- The state commissioner of taxes may contract with a local tax collector to collect delinquent property taxes assessed on homesteads. 32 V.S.A. § 3109a.

For more information about the duties and functions of the collector of delinquent taxes, please consult VLCT's *Handbook for Collectors of Delinquent Taxes* (2008). This handbook may be viewed (under "League Resources") or purchased (under "Marketplace") at [www.vlct.org](http://www.vlct.org).

## CHAPTER 11. CONSERVATION COMMISSION

### *Roles and Responsibilities*

**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. The commission must have no fewer than three and no more than nine members who are appointed by the selectboard for staggered four-year terms. All members must be residents of the town they serve. A member of the conservation commission may be removed for “just cause” by vote of the selectboard after a public hearing if the member so requests. The selectboard must provide its reasons for removal in writing.**

At its organizational meeting, the conservation commission must adopt rules necessary to perform its duties. Adoption of these rules shall be by a majority of those present and voting. The conservation commission must also annually elect a chair, treasurer, and secretary. The conservation commission must file a record of all of its transactions with the town clerk as a public record. Conservation commission meetings are open to the public and their time and place must be publicly posted. 24 V.S.A. § 4504.

The conservation commission may make an inventory and conduct studies of the municipal natural resources including air, surface, 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. 24 V.S.A. § 4505(1).

The conservation commission may inventory other town lands in which the public has an interest, including land with an historic, educational, cultural, scientific, architectural, or archaeological value. 24 V.S.A. § 4505(2).

The selectboard may budget operating expenses for the conservation commission. The conservation commission may accept money, grants, or private gifts for conservation purposes. The conservation commission may also accept gifts of land or other property for conservation purposes with the approval of the selectboard or voters. It may administer town lands, properties, or other rights acquired by the town in accordance with its powers and duties and recommend to the selectboard the purchase or receipt of gifts of land or rights to thereto, or other property for conservation purposes. 24 V.S.A. §§ 4505(3),(5).

The conservation commission provides the local appropriate municipal panel (planning commission, zoning board of adjustment, or development review board) or the district environmental commission with advisory environmental evaluations for applications for development review. 24 V.S.A. § 4505(8).

The conservation commission may cooperate with both municipal and private organizations on matters affecting the town’s environment and natural resources. 24 V.S.A. § 4505(9).

The conservation commission may educate the public on local natural resources and conservation needs by communicating with similar organizations, preparing, collecting, publishing, advertising, distributing materials, and other educational activities. 24 V.S.A. § 4506(10).

The conservation commission may make a brief report to the town of its finances and transactions for the year, and its plans and prospects for the ensuing year. 24 V.S.A. § 4506(11).

For more information about the role of conservation commissions in Vermont municipal government, contact the Association of Vermont Conservation Commissions at <http://vtconservation.com/>.

## CHAPTER 12. CONSTABLE

### *Roles and Responsibilities*

**The role of town constable varies from town to town, and depends upon whether he or she is elected or appointed, and whether the voters have elected to limit his or her law enforcement powers. At one end of the spectrum, the town constable is the town's local law enforcement officer, with all powers of search, seizure, and arrest within the town. On the other end, the constable only has the power to serve civil process, assist the health officer in the discharge of his or her duties, destroy unlicensed dogs, kill injured deer, remove disorderly people from town meeting, and collect taxes if no tax collector is elected. As of July 1, 2012 all constables are now required to have training to exercise law enforcement authority.**

- A town must elect a first constable and, if needed, a second at annual town meeting. Alternatively, a town may vote to authorize the selectboard to appoint a constable. 17 V.S.A. §§ 2646(7), 2651a. 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. In addition, towns may vote to prohibit the constable from executing any law enforcement authority. As of July 1, 2012, all constables performing a law enforcement function are required to have criminal justice training. 24 V.S.A. § 1936a. Constables who exercise law enforcement powers are considered "law enforcement officers" and cannot exercise those powers before completing the basic training requirements prescribed by the Vermont Criminal Justice Council.
- The town may vote to pay the constable a salary and at town meeting fix the sum to be paid. 24 V.S.A. § 932. In addition, the constable may collect fees for service of civil process and for the transportation of juveniles, mental patients and prisoners. 32 V.S.A. §§ 1591, 1593. If the voters fix no salary, the selectboard may set a salary for the constable.
- A constable may act only when authorized by a specific statute.
- A constable who has law enforcement authority has the powers of search, seizure, and arrest within the town. V.R.Cr.P. 3, 41. Unlike other law enforcement officers, however, constables do not have statewide jurisdiction. Their jurisdiction is limited to the boundaries of the town. *State v. Hart*, 149 Vt. 104 (1987). However, a constable who has not been prohibited from exercising law enforcement authority may transport a person whom he or she has arrested for driving under the influence (DUI) to a police department outside the town for processing, and the constable may complete the processing if he or she has been certified to do so by the Vermont Criminal Justice Training Council. 24 V.S.A. § 1936a(c).
- All constables may serve civil and criminal process, destroy animals when required by law, kill injured deer in accordance with law, assist the health officer in the exercise of his or her duties, serve as a district court officer, remove disorderly people from town meeting, and collect taxes if no tax collector is elected. 24 V.S.A. § 1936a(b).
- The governor may employ constables and other law enforcement officers in the event of a state and/or national emergency. 20 V.S.A. § 2221.

**History.** The term constable comes from Medieval England, where the original constables were military officers in a knight's household and later law enforcement officers in local government. Like the sheriff (the shire reeve), the constable, in name and duties, came to America with the first English settlers. In Vermont, constables appeared by title in the first Constitution of the Republic of Vermont in 1777, but references to them were expunged when the document was amended in 1974. The office itself has suffered corresponding loss of both power and prestige.



## CHAPTER 12. CONSTABLE

**Election, Appointment and Removal of Constables.** At present, towns may elect a first constable and, if needed, a second constable from among its legally qualified voters at annual town meeting. Alternatively, a town may vote by Australian ballot 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. Upon petition of five percent of the voters of the municipality at least 15 days before the vote, a 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 this power is rescinded by the voters at an annual or special meeting of the town. 17 V.S.A. § 2651a.

An appointed constable may be removed for cause after notice is given to the constable and a hearing is held by the selectboard. 17 V.S.A. § 2651a. The town must explain its reasons for the dismissal, and the constable must be given an opportunity to defend him or herself, including bringing witnesses before the board. 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(7).

**Oath and Bond Requirements.** The constable must take an oath (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 at any time if it sees fit. If the bond is not received within ten days from the time it is requested, the office of constable is vacant. 24 V.S.A. § 832. It will then be filled by the selectboard by appointment, which will last until the next annual or special town meeting. 24 V.S.A. §§ 961-963. However, if the selectboard fails to set an amount or request a bond from the constable, no vacancy is created. *Weston v. Sprague*, 54 Vt. 395 (1882).

**Incompatible Offices.** A first constable cannot serve as a selectboard member, school director, or auditor. Neither a spouse of a first constable nor anyone assisting the first constable in the discharge of official duties may be an auditor. An elected constable may not be town manager. 17 V.S.A. § 2647. These rules do not apply to towns having 25 or fewer legal voters. 17 V.S.A. § 2648.

**Independence of Office.** An elected constable is an independent official who is not under the direction or control of the selectboard. However, a constable may not spend town money. This means that if a constable needs a uniform or 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 constable's salary, and may limit the number of hours of law enforcement activities the town will pay for in a given year.

First and second constables are independent from each other; neither acts as the supervisor of the other.

**Training Requirements; Law Enforcement Authority.** Previously, an elected constable was not generally required to have any special training to exercise the functions of the position. However, in response to a concern that locally elected constables who act without proper training could harm individuals or subject the municipality to liability, the legislature amended the law to require all constables, either elected or appointed, to complete a course of training offered or approved by the Criminal Justice Training Council before any constable may exercise law enforcement authority. This law went into effect on July 1, 2012. Towns may continue to vote to prohibit an elected or appointed constable from exercising any law enforcement authority, regardless of whether the official has had training. 24 V.S.A. § 1936a

A constable must complete basic training requirements if he or she is to exercise law enforcement authority. 20 V.S.A. § 2358. Therefore, if the voters have authorized the selectboard to appoint a constable and have not restricted the constable's law enforcement authority, the selectboard should ensure that its appointee has completed the required training course. (See below.) Alternatively, the selectboard

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could inform an *untrained* appointee that it is a violation of state law for him or her to undertake any law enforcement activity, and that such a violation will be cause for removal from office.

A constable is generally considered a part-time law enforcement officer, working fewer than 32 hours a week and 25 weeks or less a year. 20 V.S.A. § 2358(c). To become a *certified* part-time law enforcement officer, a town constable must complete a three-part training from the Criminal Justice Training Council (the “police academy”). To enroll in the police academy, the constable must be 18 years of age, have a high school diploma or a GED, and must pass a written examination, a physical examination, and a background check.

Under these rules, full-time constables (those employed for more than 32 hours per week and more than 25 weeks per year) must satisfactorily complete a minimum of 550 hours of training within six months of their date of appointment before exercising full law enforcement powers. Part-time constables must satisfactorily complete a minimum of 58 hours of classroom instruction in order to receive a provisional 12-month certification. This certificate allows part-time constables to exercise law enforcement powers, but only under the direct supervision and control of fully certified law enforcement officers. In order to exercise full law enforcement authority, part-time constables must complete an additional 110 hours of training during a 12-month period. Constables, whether full or part-time cannot exercise their law enforcement powers on a piecemeal basis subject to the satisfactory completion of only a portion of their training.

In addition to the general training requirements, some criminal justice functions require specialized training. For example, a constable who operates electronic equipment to enforce speed limits must first be certified in the use of such equipment by the Criminal Justice Training Council.

Certification is also required prior to obtaining a blood sample or using a breath testing device on a driver who is suspected of driving under the influence (23 V.S.A. § 1200(5)) and for VIN verification. A constable without this training is authorized to issue a ticket for speeding or gross negligence in the operation of a vehicle (V.R.Cr.P. Rule 3; 23 V.S.A. §§ 1081, 1091, 1097, 1128), but without documentation of certification, it might be difficult to prove the case in court if challenged. The Criminal Justice Training Council also advises that if a constable will be issuing Vermont traffic citations, the town should provide the Court Administrator’s Office with the constable’s name, officer’s number, and history of any law enforcement training or certification. This information is in turn provided to the traffic court judges since, if the citation is contested, the court will want to verify the constable’s authority and relevant training history. The Court Administrator’s Office issues ticket books and can provide the schedule of fines. The schedule of fines can also be found online at [www.vermontjudiciary.org](http://www.vermontjudiciary.org).

**Scope of Authority.** Unlike other law enforcement officers who have historically enjoyed wide 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. See the table at the end of this chapter for a list of specific statutes under which constables may act.

A constable with law enforcement authority has the power of search, seizure, and arrest within the town. V.R.Cr.P. 3, 41. 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). A constable who has not been prohibited from exercising law enforcement authority may transport a person whom he or she has arrested for driving under the influence (DUI) to a police department outside the town for processing, and the constable may complete the processing if he or she has been certified to do so by the Vermont Criminal Justice Training Council. 24 V.S.A. § 1936a(c).

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**Other Duties and Functions.** A constable, like a sheriff, may serve civil and criminal process – including complaints, summonses, subpoenas, writs, and restraining orders – anywhere in the state and returnable to any court. 12 V.S.A. § 691. In service of process, constables have the same powers and are subject to the same liabilities and penalties as sheriffs. 12 V.S.A. § 693. No constable is allowed to serve writs in cases in which he or she has a personal and/or financial interest in the debt involved. 12 V.S.A. § 694.

In addition, a constable is 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. A constable will become tax collector if no specific officer by that title is elected at town meeting. 24 V.S.A. § 1529. A constable may be appointed as a court officer for district court (4 V.S.A. § 446), and may transport prisoners and mental patients (24 V.S.A. § 296). A 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. During town meeting, the constable may be called upon by the moderator to remove a persistently disorderly 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 for the preservation of the public peace when, in his or her judgment, the public good requires it. This only authorizes the employment of additional constables (and law enforcement officers) using state funds. 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 answered in towns without a police force by the appointment of temporary police officers to work under the direction of the constable. 24 V.S.A. §§ 1931(a), 1936. The temporary police officers are required to have completed police 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 those ordinances.

**Unorganized Towns and Gores.** The constable's powers are given to the supervisor in all unorganized towns and gores. 24 V.S.A. § 1353.

For more information about the training opportunities for constables visit the Criminal Justice Training Council website at [vcjtc.vermont.gov](http://vcjtc.vermont.gov) or call 802-483-6228.

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### Duties that a Constable May Perform under Vermont Statutes:

7 V.S.A. §§ 104, 564, 571, 600, 659.....	Enforce alcohol laws.
10 V.S.A. §§ 4748, 4749.....	Deal with injured deer or dogs chasing deer.
13 V.S.A. § 901.....	Quell riots.
13 V.S.A. § 1812.....	Seize forged or counterfeit notes or coins and the instruments used for making them.
13 V.S.A. § 2137.....	Seize illegal gambling equipment.
13 V.S.A. § 3404.....	Arrest persons suspected of treason or related offenses.
13 V.S.A. § 3762.....	Search for remains of dead person that have been disinterred and concealed, as ordered by district court judge.
13 V.S.A. §§ 4947, 4953.....	Assist in extradition.
14 V.S.A. § 3005.....	Apprehend guardian who refuses to give up guardianship for a minor child.
15 V.S.A. § 714.....	Assist in enforcing liens in divorce, desertion, and support cases.
16 V.S.A. § 1125.....	Act as truant officer ex officio.
17 V.S.A. § 2659.....	Preserve order at meetings and elections.
18 V.S.A. § 7105.....	Arrest and return persons who have escaped from a state mental hospital or training school.
20 V.S.A. § 27.....	Be recruited as auxiliary state police in civil defense emergencies.
20 V.S.A. § 2221.....	Be employed by the governor to help preserve the public peace.
20 V.S.A. § 3134.....	Seize illegal fireworks and explosives.
20 V.S.A. §§ 3624.....	Humanely destroy unlicensed dogs when a warrant has been issued.
23 V.S.A. §§ 2084, 3831.....	Report theft or recovery of motor vehicles or motor boats.
24 V.S.A. § 296.....	Transport of prisoners.
24 V.S.A. § 301.....	Require a citizen to assist him or her in the execution of certain duties.
24 V.S.A. § 1529.....	Collect taxes if no tax collector is elected.
24 V.S.A. § 1937.....	Make reciprocal arrangements with police in neighboring states.
32 V.S.A. § 3109.....	Be hired by the state commissioner of taxes to collect taxes.
32 V.S.A. § 5079(d).....	Take possession of illegally moved mobile homes.
32 V.S.A. § 5139.....	Collect delinquent property tax.
V.R.Cr.P. Rule #3 .....	Arrest without warrant, in certain circumstances, or issue a citation.
V.R.Cr.P. Rule #4 .....	Request a summons or an arrest warrant.

## CHAPTER 13. EMERGENCY MANAGEMENT DIRECTOR

### *Roles and Responsibilities*

**The emergency management director is an essential part of the state's emergency management effort and is responsible for the organization, administration, and operation of the local emergency management in the town or city. The emergency management director is under the direct control of the selectboard.**

- The emergency management director should coordinate his or her efforts with the Vermont Department of Public Safety's Division of Emergency Management and Homeland Security (DEMHS) and the district emergency management coordinators, and will work with local emergency personnel including police, fire, EMTs, and the selectboard. 20 V.S.A. §§ 5, 6.

**History.** Civil defense was originally conceived as an emergency management policy employing volunteers in municipal defense programs during wartime. In 1989 the statutes were updated to recognize that what was once civil defense is now, primarily, emergency management. Thus, the position of civil defense chairperson is now filled by individuals who assist Vermont communities in their response to "all hazards" that include natural disasters, health or disease related emergencies, accidents, civil insurrection, use of weapons of mass destruction, terrorist, criminal or radiological incident, or events that pose a threat to property or public safety in Vermont.

**Organization.** The Division of Emergency Management and Homeland Security (DEMHS) of the Department of Public Safety provides aid and support to Vermont's Local Emergency Management Directors (LEMDs), Local Emergency Planning Committees (LEPCs), Regional Planning Commissions (RPCs), Community Emergency Response Teams (CERTs), state agencies, and emergency response providers. Through its programs, both before, during, and after times of crisis, DEMHS empowers local communities through disaster preparedness programs, guidance and technical assistance. The state commissioner of Public Safety with the approval of the governor appoints the director of DEMHS. 20 V.S.A. § 3. The director of Emergency Management is charged with coordinating all emergency management efforts within the state. An emergency board is also created by statute. 32 V.S.A. § 131; 20 V.S.A. § 45. This board is made up of the governor, the chairs of the Senate Finance and Appropriations committees, and the chairs of the House Ways and Means and Appropriations committees. This board authorizes the secretary of the Agency of Administration to expend money from the emergency relief and assistance fund (ERAF) to avert emergencies and provide low interest loans and grants to individuals and municipalities that sustain damage as a result of a federally declared natural disaster.

**Local Authority.** In accordance with the Vermont State Emergency Operations Plan (SEOP), each local government is directed to establish a local organization for emergency management. The selectboard (or the mayor) may appoint an emergency management director who is responsible for the organization, administration, and coordination of the local organization for emergency management, subject to the direction and control of the selectboard (or mayor). If no director is appointed, the selectboard (mayor) is the director and may appoint an emergency management coordinator. In towns that have a town manager form of government, the town manager is the emergency management director. 20 V.S.A. § 6(a). Each local emergency management organization is charged with performing the emergency management functions within the territorial limits of the town or city, and in neighboring communities under certain circumstances defined by the statute. 20 V.S.A. § 6(b).

The local emergency management organization must participate in the development of an all-hazards Local Emergency Operations Plan (LEOP), with the local emergency planning committee and the public

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safety district. 20 V.S.A. § 6(c). It must respond to all-hazards incidents only to the extent that it is qualified to do so. 20 V.S.A. § 6(d).

According to state statute, “emergency functions” include “services provided by the Department of Public Safety, fire fighting services, police services, sheriff’s department services, medical and health services, rescue, engineering, emergency warning services, communications, evacuation of persons, emergency welfare services, protection of critical infrastructure, emergency transportation, temporary restoration of public utility services, other functions related to civilian protection, and all other activities necessary or incidental to the preparation for and carrying out of these functions.” 20 V.S.A. § 2(4). “Emergency management” means the “preparation for and implementation of all emergency functions, other than the functions for which military forces or other federal agencies are primarily responsible, to prevent, plan for, mitigate, and support response and recovery efforts from all hazards. Emergency management includes the equipping, exercising, and training designed to insure that this state and its communities are prepared to deal with all hazards.” 20 V.S.A. § 2(6). The term “homeland security” refers to “the preparation for and carrying out of all emergency functions, other than the functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize, or repair injury and damage resulting from or caused by enemy attack, sabotage, or other hostile action.”

Note that the selectboard may adopt, amend, and rescind orders, rules, and regulations as necessary to carry out emergency management functions within the community, so long as they are consistent with those established by the governor or any state agency exercising a power delegated by the governor. 20 V.S.A. § 16.

**State Emergency Response Commission.** In 1994, a state emergency response commission was created. This body consists of 15 members, including nine public members with representation from local government, a local emergency planning committee, a regional planning commission, the fire service, and law enforcement, among others. 20 V.S.A. § 30(a). The commission’s duties include designating and appointing local emergency planning committees, reviewing and commenting on the development and implementation of local emergency response plans by local emergency planning committees, assisting those committees in executing their duties, and reviewing and commenting on the comprehensive state emergency operations plan and local emergency planning committee response plans, among other things. 20 V.S.A. § 31.

**Local Emergency Planning Committee.** The local emergency planning committee is appointed by the state emergency response commission and should be comprised of representatives from the fire department; local and regional emergency medical services; local, county, and state law enforcement; media; transportation; regional planning commissioners; hospitals; industry; the national guard; the Department of Health district office; an animal rescue organization; and other interested public or private organizations. This committee is responsible for preparing a local emergency response plan, (LEOP) in coordination with the SEOP. At a minimum, the plan must identify facilities and transportation routes for extremely hazardous substances; describe emergency response procedures; designate a local emergency planning committee coordinator and facility coordinators to assist in implementing the plan; outline emergency notification procedures and evacuation plans; explain how to determine the probable affected area and population by releases of hazardous substances; describe local emergency equipment and facilities and the persons responsible for them; and provide training that is coordinated with the SEOP. Other responsibilities include coordinating with other local, regional, and state entities all emergency management activities, and reviewing and evaluating requests for funding. 20 V.S.A. § 32.

**Inter-local Assistance.** If an emergency requires a response beyond what the local emergency management team can provide, emergency management coordinators and/or volunteers from neighboring communities may render assistance, along with “mobile support units” created by the commissioner of

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the Division of Emergency Management. 20 V.S.A. § 7. Note that a person who renders aid outside the community to which he or she is appointed to serve will have all of the powers, duties, rights, privileges, and immunities as though the duties were being performed in his or her own community. 20 V.S.A. § 19.

**Allegiance.** No individual who advocates a change by force or violence in the constitutional form of the United States government, or who has been convicted of or is under indictment or information charging any subversive act against the United States may be associated in any capacity with the state or local emergency management organization. 20 V.S.A. § 18.

**Immunity.** According to statute, “except in the case of willful misconduct or gross negligence, the ... local emergency planning committees ... involved in ... emergency management activities shall not be liable for the death of or any injury to persons or loss or damage to property resulting from an emergency management service or response activity, including the development of local emergency plans and the response to those plans.” 20 V.S.A. § 20(a).

It is the responsibility of the director to coordinate all emergency actions within the community. As a practical matter, this means that in an emergency the director helps to ensure that all of the town services are coordinated. For example, the police and fire departments may need to coordinate with the utility departments. To assist in this coordination, a town’s local emergency planning committee should include representatives from all of the essential service providers of the town. Upon request of the selectboard, the emergency management director should schedule exercises and drills to test the local service’s responses to the various types of problems that can develop in an emergency.

For more information, contact Vermont Division of Emergency Management and Homeland Security, 103 South Main Street, Waterbury, VT, 05671-2101 at [vem.vermont.gov/](http://vem.vermont.gov/), 802-244-8721 or 800-347-0488. For the Hazardous Materials Hotline, call 800-641-5005.

## CHAPTER 14. ENERGY COORDINATOR

### *Roles and Responsibilities*

**The town energy coordinator is responsible for working with the town planning commission to develop a town energy plan and cooperate with regional, state, and federal agencies that are responsible for energy matters. The energy coordinator works to coordinate existing energy resources in the town and may also conduct an energy audit of town vehicles and buildings. He or she may study and evaluate sources of energy that are alternatives to those presently available, with a view toward the more efficient and economical use of existing and potential energy resources within the town.**

**History.** The office of energy coordinator was created in 1975 during the height of a national energy crisis. This position enables local government to study both public and private energy use in local communities, develop policies to encourage the development and utilization of alternative energy resources, and promote conservation efforts in the town. In 1979, the criteria of a town plan under Act 200 were expanded to include an energy plan. Accordingly, many town energy coordinators work closely with the planning commission to develop this section of the town plan. 24 V.S.A. § 4382(a)(9).

**Appointment.** The selectboard may appoint and determine the length of term for an energy coordinator. 24 V.S.A. § 1131. The energy coordinator may be an ex-officio, non-voting member of the planning commission. 24 V.S.A. § 4322.

**Statutory Duties.** The town energy coordinator “coordinate[s] existing energy resources in the town and cooperate[s] with the town planning commission and with those federal, state and regional agencies of government which are responsible for energy matters. ... An energy coordinator may study and evaluate sources of energy which are alternatives to those presently available with a view toward the more efficient and economical utilization of existing and potential energy resources.” 24 V.S.A. § 1131. These might include dams that could become sources of hydroelectric power and municipal forests to provide fuel for public buildings in the community.

The energy coordinator must work closely with the selectboard. He or she has no independent authority to take action on behalf of the municipality, but simply acts as a resource for the town. The coordinator must make periodic reports of his or her activities to the selectboard as it may require, and may perform such other duties, studies, or examinations as may be required by the selectboard. 24 V.S.A § 1131(d).

**The Energy Committee.** An energy committee may be created at any time by the voters of the municipality, through the adoption of bylaws, by charter, or by an act of the selectboard. The energy committee will consist of no fewer than three members, all of whom must be residents of the town. The selectboard retains the authority to set terms, appoint members, and fill vacancies. The energy coordinator would likely be the chair of an energy committee. Members may be removed at any time for just cause by vote of the selectboard. Reasons must be given in writing and the member must be given an opportunity for a hearing. 24 V.S.A. § 4433. The energy committee must comply with the open meeting law. 1 V.S.A. §§ 310 et seq.

An energy committee may advise the selectboard or planning commission on preparing and implementing the town plan through policy and regulation. Energy committees can also educate citizens about energy conservation measures. The Vermont Energy and Climate Action Network (VECAN) assists in starting, supporting and strengthening town energy committees in Vermont. For more information contact VECAN at [www.vecan.net](http://www.vecan.net)



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**The Town Energy Plan.** The energy plan is part of a town's land use plan. 24 V.S.A. § 4382(a)(9). It may be written by the energy coordinator in conjunction with the planning commission. Preparing a town energy plan generally involves the following five steps:

1. Collect data on and inventory current and potential energy sources.
2. Assess current energy needs and uses. Identify consumption patterns of the municipality by residential, commercial/industrial, and transportation sectors.
3. Assess the municipal energy future by evaluating the potential of national, regional, and local trends such as development patterns, public transit use and commuting habits, and fuel prices.
4. Define and list goals, objectives and progress; describe energy programs and initiatives; coordinate with the municipal plan and bylaws; and coordinate with other municipalities, regional planning commissions, and programs sponsored by utilities.
5. Finalize the energy plan in coordination with the planning commission and present for adoption by the selectboard as part of the town land use plan.

**Implementing the Energy Plan.** There are many steps a community can take to implement the town's energy plan, including:

- **Town Plan.** Incorporate transportation issues and use of renewable energy resources into the town plan.
- **Zoning Bylaws.** Craft zoning bylaws to implement relevant policies and objectives set out in the plan.
- **Town Buildings.** Upgrade insulation and heating systems to make buildings more energy efficient.
- **Town Forests.** Implement policies to enable use of town forests for alternative heating fuel.
- **Carpooling or Public Transportation.** Promote town-wide carpooling or work with regional public transportation projects.
- **Weatherization Assistance Programs.** Participate in community weatherization programs.
- **Intergovernmental Cooperation.** Coordinate with other towns on transportation improvements, or work together on a larger scale alternative energy project, such as using methane gas from a closed landfill, or developing a hydroelectric site.
- **Coordinate Private Initiatives.** Assist private groups – such as the local Boy Scouts and Girl Scouts, service clubs, or community action organizations – in providing weatherization for town buildings and low-income residents.

For more information on municipal energy planning please consult:

*The Energy Planning and Implementation Guide for Vermont Municipalities* (2011), [www.vlct.org/assets/MAC/energy\\_guidebook.pdf](http://www.vlct.org/assets/MAC/energy_guidebook.pdf); *Communities Tackling Vermont's Energy Challenges* (2011), [www.vlct.org/assets/MAC/energy\\_case\\_studies.pdf](http://www.vlct.org/assets/MAC/energy_case_studies.pdf); *Town Energy and Climate Action Guide* (2007), Vermont Energy and Climate Action Network, Vermont Natural Resources Council, 9 Bailey Avenue, Montpelier, VT 05602, 802-223-2328; *A Guide to Municipal Energy Planning* (1993), Vermont Department of Public Service, 112 State Street, Montpelier, VT 05620.

## CHAPTER 15. FENCE VIEWER

### *Roles and Responsibilities*

**Fence viewers played an active role in Vermont in the last century. Today, however, fence viewers are called upon to act only in limited situations. On occasion, the selectboard will call upon the fence viewers to examine a fence line between adjoining properties to determine what portion of the fence must be made, repaired, or maintained by each party. Fence viewers may also be asked to determine where a fence must be placed when it cannot be placed squarely on a property line.**

- Three fence viewers may be appointed by the selectboard after its election. They must be qualified voters of the town and must be sworn into office. 24 V.S.A. §§ 831, 871.
- Fence viewers examine fences within the town when requested to do so by the selectboard.
- When called upon to act, the fence viewers must give notice to all interested parties, or their tenants or agents, of the time when they will examine the fence or line between adjoining lands, before they make a division relating to the fence or line. 24 V.S.A. § 3811.
- All decisions of the fence viewers must be certified and recorded with the town clerk. A decision so certified and recorded is valid against the parties and their heirs and assigns. 24 V.S.A. § 3811.

**History.** Under common law, landowners were not obligated to fence their land unless such a duty was established by an agreement between the interested parties. However, over time, the courts encouraged parties to fence land by creating strict liability when property damage was caused by trespassing livestock. Ultimately, Vermont enacted laws to incorporate the duty to fence land. Under this statutory scheme, owners or occupants of adjoining lands were equally responsible for making and maintaining equal portions of the fence dividing their lands. 24 V.S.A. § 3802. An owner of unimproved and unoccupied land can be exempted from this requirement upon application to the selectboard. Fence viewers were called upon to determine the placement of fences and to allocate costs of placing and maintaining fences between adjoining property owners.

In 1989, the Vermont Supreme Court found unconstitutional 24 V.S.A. § 3802 that would require abutting landowners who own no livestock to pay a portion of the costs to maintain a fence that separates their property from a neighboring parcel. *Choquette v. Perrault*, 153 Vt. 45 (1989). The Court reasoned that changes in land use patterns in Vermont meant that the fence law increasingly applies to landowners without livestock. The Court concluded that in such situations, the fence law is burdensome, arbitrary, and confiscatory, and is thus unconstitutional.

Because of this change in case law and the advent of surveys and title searches of lands that show fence lines and boundaries, the role of the fence viewer has become somewhat limited. Some municipalities with charters have done away with the office of fence viewer, and the legislature has given selectboards the discretion to not fill the office if they so choose.

### **Statutory Authority.**

- Upon request of the selectboard, the fence viewers shall examine fences within the town and determine who is responsible for maintaining the fence dividing two parcels. 24 V.S.A. § 3810.
- When the land of two property owners is being pastured by both without a division fence, the fence viewer can be called upon to determine the number of animals each can put upon the land. 24 V.S.A. § 3804.

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- When a fence cannot be built along a property line because of water or other impediments, and the owners cannot agree on where it should be built, either owner may apply to the fence viewers, who will then determine whether it will be built and how much and what part of this fence each owner must build and maintain. 24 V.S.A. § 3805.
- If a fence is built on the boundary between two towns, its exact location can be determined by a board of one or more fence viewers from each town. A finding, signed by both boards and filed in the town clerk's office in each town, will be valid against any claims from either party, its heirs or assigns. 24 V.S.A. § 3813.
- Decisions of the fence viewers are final when certified and recorded in the clerk's office. 24 V.S.A. §§ 3805, 3811.

**Note, however, that fence viewers may not determine a boundary line or ownership of land, and only the selectboard can order that an owner of unimproved or unoccupied land is not responsible for building or maintaining a share of the fence.** *Camp v. Camp*, 59 Vt. 667 (1887); *Shaw v. Gilfillan*, 22 Vt. 565 (1850); 24 V.S.A. § 3802.

**Compensation.** Fence viewers shall receive \$6.00 per day for their services, as provided in 32 V.S.A. § 1675.

**Appeals.** A decision of the fence viewer may be appealed to the district or superior court if such appeal is claimed within two hours of the rendition of the decision. 24 V.S.A. § 3810.

**Penalty.** A fence viewer who fails to perform his or her duties will be liable to pay the individual who requested such services \$5.00, with costs, in civil damages. 24 V.S.A. § 3810.

## CHAPTER 16. FIRE WARDEN

### *Roles and Responsibilities*

**The fire warden plays an important role in preventing forest fires in the town by enforcing laws and proclamations designed to prevent forest fires, by patrolling areas that are particularly vulnerable to fire during the seasons in which such fires are most apt to occur, and by issuing permits for open burning within the town. The fire warden, in conjunction with the local fire department, is also responsible to act quickly to bring forest fires under control.**

**Appointment.** The town fire warden is appointed by the commissioner of the Vermont Department of Forests, Parks and Recreation, with the approval of the local selectboard. He or she serves for a term of five years or until a successor is appointed. The fire warden may be removed for cause at any time by the commissioner, with the approval of the selectboard. 10 V.S.A. § 2641. If the commissioner feels it is appropriate, he or she may appoint deputy fire wardens who shall act under the direction of the fire warden and have the same powers, duties, and pay as the fire warden. The commissioner may appoint special fire wardens who will hold office at his or her pleasure and who will have all of the same powers and duties as the fire warden, but who is paid from department appropriations. 10 V.S.A. § 2641.

When there are woodlands within a city or incorporated village, the chief of the fire department acts as the fire warden. 10 V.S.A. § 2641.

**Salary.** The salary for the town fire warden and his or her assistants is determined by the selectboard, and is paid out for the time actually spent in the performance of duties. In addition to the warden's other duties, the town pays him or her \$0.15 for each fire permit issued. The commissioner pays the town fire warden \$20.00 annually for submitting district fire reports, and an additional \$15.00 per diem for attendance at fire training meetings called by the commissioner. 10 V.S.A. § 2642. The fire warden receives the same pay whether putting out fires, posting notices, patrolling, or making investigations of damages. 10 V.S.A. § 2644(c).

Any individual employed by the fire warden to assist in extinguishing a forest fire must be paid the same per-hour rate as is paid by the town for labor on roads. Persons officially summoned to assist in extinguishing a forest fire shall be paid a minimum of two hours pay for the first hour or part thereof. 10 V.S.A. § 2642(c).

**Duties.** The fire warden is responsible for taking measures needed to bring forest fires under prompt control. He or she may go on private property to extinguish fires and may arrest, without warrant, any person who violates the laws or proclamations pertaining to forest fires. 10 V.S.A. § 2644(a).

During the danger season, – usually in the autumn or anytime during a prolonged drought – or during a time when a proclamation on a fire danger has been issued by the governor, or anytime the fire warden feels the necessity of extra caution, he or she may, with the approval of the commissioner, establish a patrol in areas where the danger is potentially the greatest. Fire wardens taking part in these patrols will receive the same pay they receive for the actual fighting of fires. 10 V.S.A. § 2644(c).

If a town acquires a municipal forest, its protection is also under the supervision of the town fire warden, who will work under the direction of the commissioner. 10 V.S.A. § 2654.

**Fire Permits.** The fire warden is in charge of issuing permits for open burning. The general rule is that it is unlawful to start a fire outside to burn brush, weeds, grass, or rubbish of any kind without a permit from the fire warden or a deputy warden, which states when and where the fire may be started. The warden shall issue a written permit within 12 hours of granting verbal permission. The fire warden must use

## CHAPTER 16. FIRE WARDEN

common sense and take into account the particular risk posed in order to determine whether a permit should be granted in each individual case. A permit is not required for starting a fire 200 feet or more from any woodland, timberland, or field containing dry grass or other flammable plant material contiguous to forest or woodland. 10 V.S.A. § 2645(a).

**In addition to a permit from the fire warden, permission of the owner, lessee, holder of right-of-way of the land, or his or her agent must also be granted for any woodland fires between April 1 and November 1.** 10 V.S.A. § 2647.

During periods of extreme fire hazard, the commissioner may notify the local fire wardens that no burning permits are to be issued for a specified period of time. 10 V.S.A. § 2645(a).

If the commissioner determines that any town or any portion of any town in the state does not need the protection of this statute, he or she may advise the fire warden to that effect, and the fire warden will post notices in at least five contiguous places in the town with that information. 10 V.S.A. § 2645(b).

The exception to the general rule is that the provisions of 10 V.S.A. § 2645(a) will not apply:

- to areas posted in accordance with the above paragraph;
- to fires that are built in specially constructed stone arches at state parks;
- to fires that are built in special containers constructed for that purpose under conditions approved by the local fire warden; or
- to areas within cities or villages maintaining a fire department. 10 V.S.A. 2645(c).

When forests are being cut, the resulting slash must be treated to lessen fire hazards by:

- removing all slash within 50 feet of a public highway or a woodlot boundary line;
- removing all slash within 100 feet of standing buildings on adjoining property; and
- leaving the main logging roads through the cut-over areas free from slash so that tractors and fire fighting equipment can get through in the event of a forest fire. 10 V.S.A. §2648

The exception is that if the fire warden is satisfied that no fire hazard exists as a result of such cutting, he or she may relieve the operator of the above conditions. 10 V.S.A. § 2648.

**Reporting.** In the process of carrying out his or her duties, the fire warden must keep records of the number of forest fires, their causes, areas burned, and the character and amount of damages, as well as the expenses incurred in fighting these fires. A report to the commissioner shall be submitted within two weeks after any forest fire and must be filed on forms provided by the commissioner. 10 V.S.A. § 2644(b).

## CHAPTER 17. GRAND JUROR

### *Roles and Responsibilities*

**The grand juror is responsible for inquiring into and providing information to the proper authorities of criminal offenses that may come to his or her knowledge that occur in the town in which he or she has been elected. 13 V.S.A. § 5504. This office is mostly obsolete; the state's attorneys provide most of the criminal investigation, enforcement, and prosecution services in the local communities.**

**History.** Historically, the town grand juror had the authority to enforce criminal misdemeanor laws, including ordinance violations, in the town in which he or she was elected. Under modern laws of arrest, the grand juror is not a law enforcement officer, and is thus unable to arrest or cite an individual for violating a law. In most cases, the grand juror's prosecutorial function has been taken over by the state's attorneys or the Attorney General's office.

**Election.** One or more grand jurors are elected at a town's annual meeting. The grand juror shall serve until the next annual meeting and until a successor is chosen, unless otherwise provided by law. 17 V.S.A. § 2646(10).

**Payment.** No statutory provisions require payment for the grand juror's services. In addition, if compensation is not set by the town or the selectboard, the official may not make a claim for personal service to the town. 24 V.S.A. § 931.

**Powers.** Prior to adoption of civil ordinance enforcement in the Judicial Bureau, in a few larger communities, such as Rutland and Burlington, the city grand juror prosecuted all criminal ordinance violations occurring within the city. This was done in concert with the local state's attorney's office, which appointed the grand juror as a specially assigned state's attorney. When so appointed, the grand juror prepared the cases and prosecuted them in court on behalf of the city.

In communities that have adopted civil ordinances, the grand juror no longer has a role to play in enforcing ordinances, unless the selectboard chooses to name him or her as an official who is authorized to write tickets or prosecute cases in the Judicial Bureau.

Given the complex legal situation that exists today and the ease with which lawsuits are initiated against even professional law enforcement personnel, we strongly urge any town grand juror who receives information about criminal wrongdoing in the town to contact the local state's attorney.

## CHAPTER 18. HEALTH OFFICER

### *Roles and Responsibilities*

**The local health officer is a hybrid position. Although the selectboard recommends an individual for appointment to the position and works with that person on local health problems, the local health officer is appointed by the state commissioner of the Department of Health. 18 V.S.A. § 601. In addition, although the health officer is paid by the town, he or she is considered a state employee for purposes of liability insurance coverage and state laws that protect public employees. 18 V.S.A. §§ 602, 624.**

**The local health officer performs an important function for the town. He or she is the individual a citizen may call to complain of unsafe conditions in rental housing or on public or private property, or to report a septic failure, or an animal that might be rabid. The health officer must investigate all complaints, has extensive authority to take emergency abatement steps, and may enforce any state health regulations and local health ordinances in his or her town.**

- The health officer serves an appointment of three years, and until a successor is appointed. 18 V.S.A. § 605. Upon written request of the local board of health, the state commissioner of health may appoint one or more deputy health officers for a town. 18 V.S.A. § 601(a).
- The health officer serves as the executive officer and secretary of the local board of health, which is made up of the selectboard (or city council) plus the health officer. 18 V.S.A. §§ 604, 605. The local board of health is responsible to make and enforce rules and regulations for the prevention, removal, or destruction of public health hazards, and the mitigation of public health risks. These rules must be approved by the state commissioner of health. 18 V.S.A. § 613(a).
- The local health officer must make a sanitary inspection of all schools and public buildings and report such findings annually each February. 18 V.S.A. § 608.
- In the enforcement of its rules and health policies, the health officer and local board of health may call upon law enforcement officers for assistance. An officer who refuses to render assistance when so requested shall be fined up to \$200. 18 V.S.A. § 617.
- The health officer may go before the state commissioner of health or the selectboard to obtain a health order. In certain situations, he or she has the authority to issue an emergency health order to prevent or abate an imminent and substantial health hazard or risk. 18 V.S.A. §§ 126, 127.
- The local health officer is responsible for enforcing the Vermont Department of Health's Rental Housing Health Code, 18 V.S.A. § 602a.

For more information about the roles and responsibilities of the health officer or local health board, please consult the Vermont Department of Health's *Vermont Town Health Officer Manual*, available online at <http://healthvermont.gov/local/tho/documents/TownHealthOfficerManual.pdf>, or VLCT's *Handbook for Vermont Selectboards*, Chapter 6, Section B., at [www.vlct.org](http://www.vlct.org)

## CHAPTER 19. JUSTICE OF THE PEACE

### *Roles and Responsibilities*

**The office of the justice of the peace is a county office; however, the justices are elected by the town voters. The justices of the peace at one time performed important judicial functions in towns, but this authority has largely been repealed. Justices of the peace can no longer exercise judicial powers, but they may serve as magistrates when so commissioned by the Vermont Supreme Court. Vermont Constitution, Chapter II, § 52. Aside from administering oaths of office and solemnizing marriages, virtually all of the justice's authority derives from his or her membership on the board of civil authority. These duties include assisting in elections, delivering and counting ballots, maintaining checklists, and hearing tax appeals.**

**History.** The Court of the Justices of the Peace was one of several local offices created in 15<sup>th</sup> and 16<sup>th</sup> century England by the Tudors to allow government participation at the grassroots level. This court handled minor civil and criminal matters and was presided over by the justice of the peace. By encouraging the burgeoning middle class to participate in local government, royalty strengthened English common law and, not accidentally, provided a tool to help the Crown keep the restless nobility in check. The system of justice courts came to Massachusetts in the 17<sup>th</sup> Century and to Vermont in the 18<sup>th</sup> Century.

In the years since, many of the duties and prerogatives of the justices have dissipated or have been repealed completely, with the district and small claims courts assuming the duties. As for prerogatives, not many justices of the peace really expect to be addressed as “Mr. (or Ms.) Justice” anymore.

In Vermont, the position of justice of the peace is created by the Vermont Constitution, which sets out the nomination, election and terms of the office. Vermont Constitution, Chapter II, § 43.

**Nomination and Election.** Justices are nominated for office on or before the first Tuesday in August in even numbered years, but because this position used to involve great political influence, the nominating procedure is considerably different than it is for town officers. 17 V.S.A. § 2413.

Political party members in each town, on each even year, upon the call of the town committee, may meet in caucus and nominate candidates for the office of the justice of the peace. If the town committee fails to call such a caucus, the committee itself shall meet and nominate candidates as provided in 17 V.S.A. §§ 2381-2385. Where a political party has not formally organized in a town, any three members/voters of the party may call the caucus to nominate candidates. 17 V.S.A. § 2413(c).

When a caucus is held to nominate candidates for justice of the peace, the town committee or other persons holding the caucus must post notice of the caucus in three or more public places in the town not less than seven days before the date of the caucus. In towns having a population of more than 1,000, a notice of the caucus must also be published in a newspaper of general circulation in the town not less than three days prior to the caucus. 17 V.S.A. § 2413(d).



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**The number of justices allocated to each town is apportioned according to population.** Vermont Constitution, Chapter II, § 52.

Allocation of Justices According to Population	
Population	Number of Justices
Fewer than 1,000	5
1,000-2,000	7
2,000-3,000	10
3,000-5,000	12
More than 5,000	15

In some small towns, members of the major political parties meet together and apportion the number of justices to be nominated from each party, so that only the total number of justices for that particular town is actually nominated. In larger municipalities, each party often fields a full slate.

Independent candidates for justice of the peace may have their names placed on the ballot if they file a consent form and a statement of nomination containing the signatures of 30 legal voters of the town, or one percent of the checklist, whichever is less, with the town clerk. 17 V.S.A. §§ 2401, 2402.

Justices of the peace are elected biennially on the first Tuesday next after the first Monday in November, during the general election. Vermont Constitution, Chapter II, § 43.

**Term of Office.** The justice's term of office runs for two years and takes effect on February 1 following the election. 4 V.S.A. § 491.

**Resignation.** In the event of a vacancy among the justices of the peace, the justice should notify the governor and the town clerk. This is because the governor appoints the successor justice. It is a courtesy to notify the town clerk, since he or she certifies the election of a justice. 17 V.S.A. §§ 2592(i), 2623(a)(5).

**Oath of Office.** Before assuming his or her duties, each justice must deposit with the town clerk a signed copy of the official oath, certified by the administering magistrate or notary public. The secretary of state provides the forms for the justice's oath. 4 V.S.A. § 491. Note that a justice who willfully fails to file a copy of the oath with the clerk may be fined up to \$100. 4 V.S.A. § 492. Failure to file was also held to disqualify a justice from serving on the board of civil authority. See *Federal Land Bank v. Flanders*, 105 Vt. 204 (1933).

**Compensation.** Compensation to justices for delivering early or absentee ballots must be set by the board of civil authority and paid by the town 17 V.S.A. § 2538(a). Otherwise, there is no compensation for performing the functions of justice. It is customary, but not required, to pay the justice of the peace when he or she performs a marriage ceremony.

**Administering Oaths.** In the absence of other provisions made by law, oaths of office may be administered by justices of the peace. 12 V.S.A. § 5852. When an oath is administered to a person who has religious objections to the use of the word "swear," the word "affirm" may be substituted. Likewise, the phrase "under the pains and penalties of perjury" may be substituted for the phrase "so help you God." 12 V.S.A. § 5851.

## CHAPTER 19. JUSTICE OF THE PEACE

**Certified Copies.** After the justice of the peace's term of office has expired, and so long as he or she is residing in the same county, a justice may make and certify copies of the records of his or her official business. Such copies shall have the same validity as though made and certified while he or she was in office. 4 V.S.A. § 500. Note that justices of the peace are *ex officio* notaries public under authority granted in 24 V.S.A. § 441(b).

**Performing Marriages.** Justices of the peace are among those authorized to perform marriage ceremonies. 18 V.S.A. § 5144(a). They may perform ceremonies anywhere within the state of Vermont. The law does not require any particular ceremony or speech by the justice for a marriage to be solemnized. For a suggested ceremony, please consult *The Justice of the Peace Guide*, published by the Vermont Secretary of State's Office, available online at [sec.state.vt.us/municipal/JP\\_Guide.pdf](http://sec.state.vt.us/municipal/JP_Guide.pdf).

Anyone authorized to solemnize marriages in the State of Vermont, including justices of the peace, shall require from the parties a license issued by the clerk of the town in which either one of the parties resides. If neither is a resident of the state, a license may be obtained from any town clerk in the state. The marriage must be solemnized within 60 days from the date that the license is issued, after which the license is void. After the ceremony, the justice must fill out the appropriate portion of the form, sign and certify it, and return it within ten days to the town clerk who issued it. 18 V.S.A. § 5131(b)(c).

According to statute, a justice of the peace must require a civil license of parties before solemnizing a marriage. The license immunizes the justice from all liability that might arise from performing the marriage. 18 V.S.A. § 5145.

**Confession of Debt.** Perhaps as an oversight, the legislature has left in the statutes a provision that permits a justice of the peace to accept and record a confession of debt to a creditor when this confession is made by the debtor personally. However, no judgment will be rendered until specific and particular details have been submitted in writing to the justice. 12 V.S.A. § 4671. This provision is a holdover from the time when justices had judicial authority. It means that if a debtor writes to a justice indicating that he owes a creditor a certain sum, the justice can render a "judgment" that is binding on the debtor and has the same effect as if a judgment had been rendered after court process.

**Board of Civil Authority.** As a member of the board of civil authority, the justice of the peace performs the following functions:

- **Maintaining the Checklist.** The town clerk must call a meeting of the board of civil authority before every election, and as may be necessary, to revise the voter checklist. The board must meet at least once after the deadline for filing applications to be added to the checklist has expired, which is five o'clock the Wednesday preceding the election. If no application is received, it is not necessary to meet. 17 V.S.A. §§ 2142, 2144.
- **Assisting in Elections.** The justice of the peace may work as an election official and assist at the polls, even if his or her name appears on the ballot to be reelected justice of the peace. 17 V.S.A. §§ 2451, 2456.
- **Delivering Absentee Ballots.** Justices of the peace are designated by the board of civil authority to deliver absentee ballots to voters who are ill or physically disabled, but who did not request absentee ballots be mailed to them. Pairs of justices of the peace (one from each major political party) will deliver absentee ballots on the day assigned to them during the eight days immediately preceding election day and on election day. Upon request, the justices may assist an individual in filling out the ballot and may explain how the absentee ballot form works, but they obviously cannot influence how the individual votes. The justices must return the completed absentee ballots to the clerk before the

## CHAPTER 19. JUSTICE OF THE PEACE

polls close on election day so that they may be counted. Note that a justice may not deliver absentee ballots if he or she is otherwise disqualified from serving as an election official under 17 V.S.A. §§ 2456, 2538.

- **Counting Ballots.** As election officers, the justices of the peace assist in tallying the official checklist and in counting the ballots. 17 V.S.A. § 2451.
- **Tax Appeals.** The board of civil authority hears appeals from final decisions of the listers as to the valuation of property for the purpose of property taxation. A person who wishes to appeal must write to the board within 14 days of receiving notice of the final decision of the listers, stating the reason for the appeal. The board hears the appeal and a committee of three or more members of the board makes an inspection of the property and files a report to the board within 30 days from the hearing and before the final decision. Within 15 days of the report from the committee, the board makes its findings and decisions, which it certifies and files with the town clerk. 32 V.S.A. § 4404. For a more extensive discussion of this topic, see VLCT's *Handbook for Vermont Selectboards*, available at [www.vlct.org](http://www.vlct.org), and the *Handbook on Property Tax Assessment Appeals*, available at [http://www.sec.state.vt.us/municipal/tax\\_appeal\\_handbook\\_2007.pdf](http://www.sec.state.vt.us/municipal/tax_appeal_handbook_2007.pdf), published by the Vermont Department of Tax's Division of Property Valuation and Review, 802-828-5860.
- **Board of Tax Abatement.** As members of the board of civil authority, justices of the peace are members of the board of tax abatement. 24 V.S.A. § 1533. The board may abate property taxes, collection fees, and interest, in whole or in part:
  - of a person who dies insolvent;
  - of a person who has removed from the state;
  - of a person who is unable to pay his or her taxes, interest, and collection fees;
  - in which there is a manifest error or a mistake of the listers;
  - upon real or personal property lost or destroyed during the tax year;
  - of real property owned and occupied as a residence by a veteran of any war or his or her spouse, widow(er), or child if one or more of them receives compensation for death or disability paid by the military or Veterans Administration, as described in 32 V.S.A. § 3802(11) who file a timely claim due to sickness or disability or other good cause as determined by the board; or
  - 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. 24 V.S.A. § 1535.

Decisions to abate or not to abate are wholly discretionary, and it is unclear whether an individual who does not like a decision of the board may appeal the decision to a court for review. The board may order an abatement to be paid in the form of a refund or as a credit against taxes for the ensuing year. If the town charges interest for overdue taxes, then the town shall also pay interest on the amounts to be abated, from the date that the payment was due or made, whichever is later. 24 V.S.A. § 1535.

For more information about the justice of the peace, please refer to *The Justice of the Peace Guide*, which is available online at [www.sec.state.vt.us/municipal/JP\\_Guide.pdf](http://www.sec.state.vt.us/municipal/JP_Guide.pdf).

For more information about the tax appeal process, please refer to the *Handbook on Property Tax Assessment Appeals*, also available online at [www.sec.state.vt.us/municipal/tax\\_appeal\\_handbook\\_2007.pdf](http://www.sec.state.vt.us/municipal/tax_appeal_handbook_2007.pdf).

## CHAPTER 20. LIBRARY TRUSTEE

### *Roles and Responsibilities*

**The voters at an annual or special town meeting have the authority to create a “municipal library.” The selectboard will appoint a board of trustees of not less than five members for staggered terms. A municipality may vote at annual meeting to elect trustees, which shall continue until changed by the voters at an annual or special town meeting. The trustees “shall have full power to manage the public library, make bylaws, elect officers, establish a library policy and receive, control and manage property which shall come into the hands of the municipality by gift, purchase, devise or bequest for the use and benefit of the library.”**

- Vacancies on the board of trustees are filled by the selectboard until the next election. 24 V.S.A. §§ 961, 963.
- The library trustees manage all library staff and may hire a director to help in the day-to-day administration of the library. 22 V.S.A. § 143 (a).
- The Vermont Legislature has given municipal libraries very broad power, unlike other municipal departments. They “have full power to manage the public library, ...” which includes the ability to execute orders on the treasurer and hire and fire library employees. 22 V.S.A. § 143 (a).

**Creation of a Board of library trustees.** When a town votes to establish a municipal library, unless the town votes to elect library trustees, the selectboard must appoint at least five trustees with staggered terms. The method of election/appointment will remain in place until changed by the voters of the municipality at an annual meeting. 22 V.S.A. § 143 (a). When a quorum of trustees meets to discuss the business of the board they must comply with the open meeting law. 1 V.S.A. §§ 310 et seq.

**Powers of the Board of Library Trustees.** The library trustees have all the power to manage the public library. The selectboard, unless otherwise indicated in a charter, has none. 22 V.S.A. § 143 (a). These duties include the following:

- Creating bylaws that address how many members make up the board of trustees, rules of procedure that include the election of officers, and bidding or purchase policies that instruct how the trustees will manage the library.
- Controlling, receiving, and managing property that comes into the hands of municipality for the benefit of the library, including buildings, land, computers, and other equipment necessary for the operation of the library.
- Hiring and firing employees and setting compensation of employees, including the provision of benefits.
- Executing orders on the treasurer for payment of bills and other expenses for library purposes.

**Funding.** A town may appropriate money as necessary for suitable library facilities. Even though library trustees have the full power to manage the library, the selectboard sets the budget of the library for annual approval by the voters. Therefore, it is critical that the trustees and the selectboard work together. Each year, the budget must include an appropriation for the maintenance and care of the municipal library. 22 V.S.A. § 142. Appropriations from the town are only one way to fund a municipal library. The trustees

## CHAPTER 20. LIBRARY TRUSTEE

can accept gifts, bequests, and donations. The library can fundraise through raffles and book sales. All money raised through these efforts is turned over to the treasurer.

The town treasurer has the authority to invest library funds with the approval of the selectboard. 24 V.S.A. § 1571 (b). However, this does not apply to any funds held in trust by the library. A donor may put stipulations on the use of funds held in trust, and the trustees have the authority to spend pursuant to the conditions and invest the funds as they see fit. All accounts are open to inspection by the public.

The trustees shall annually report the condition of the library and of the management and expenditures at the annual meeting of the municipality. The town auditors also have the authority to audit municipal library accounts. 22 V.S.A. § 144; 24 V.S.A. § 1683.

**Personnel.** The employees of a municipal library answer to the board of trustees. The trustees may appoint a director to assist in the day-to-day management of library operations, including delegating authority to manage personnel, but it is clear that the selectboard does not manage municipal library employees. In the case *Hartford Board of Library Trustees v. Town of Hartford*, No. 2002-207 (Vt. November 21, 2002), the question presented was whether the town (through its town manager) or the library board of trustees has authority to set the level of compensation for the town librarian.

The Supreme Court sided with the library trustees, stating, “the Legislature could have used the simple infinitive ‘to manage’ in [22 V.S.A.] § 143 (a), but instead chose the phrase ‘full power to manage.’” *Id* at 3. The statute relied upon in this case by the trustees states: The library board of trustees “shall consist of not less than five trustees who shall have *full power* to manage the public library, make bylaws, elect officers, [and] establish a library policy ...” 22 V.S.A. § 143 (a) (emphasis added).

For more information on municipal library trustees, please consult *The Law of Public Libraries* (2010) published jointly by the Vermont Department of Libraries and the Vermont Secretary of State’s Office, [http://sec.state.vt.us/municipal/pubs/Law\\_of\\_Public\\_Libraries.pdf](http://sec.state.vt.us/municipal/pubs/Law_of_Public_Libraries.pdf).

## CHAPTER 21. LISTER

### *Roles and Responsibilities*

**The lister plays an important role in town government. He or she is charged with determining the value of the real and personal property in the town on which the selectboard will set a tax rate necessary to raise the money to pay for town services, the maintenance of town highways, and the schools.**

Each town must have one lister for a term of three years whom is elected by ballot, unless the town voted to eliminate the town lister and contract with or employ a professional qualified assessor. 17 V.S.A. §§ 2646(5), 2651c. At annual or special town meetings, a town may vote to elect two additional listers for terms of one year each. 17 V.S.A. § 2650(a).

A lister may not also be a member of the selectboard. 17 V.S.A. § 2647(a)(2). The selectboard sets the listers' compensation unless it is set by the electorate. 24 V.S.A. § 933.

The lister is directed to appraise all taxable property in the town at 100 percent of the fair market value. 32 V.S.A. § 3431. The estimated fair market value is the price that the property will bring in the open market when offered for sale and purchased by another, taking into consideration all the elements of the availability of the property, its use both potential and prospective, any functional deficiencies, and all other elements, such as age and condition, which combine to give property a market value. 32 V.S.A. § 3481(1).

Agricultural and forest properties that are part of the use value program must be appraised at their use value in accordance with 32 V.S.A. Chapter 124, subchapter 1.

The lister must set all real and personal property in the grand list at one percent of its listed value on April 1 of the year of its appraisal. 32 V.S.A. § 3482.

The lister must provide an annual abstract of the grand list to the town clerk. 32 V.S.A. § 4181.

The lister holds grievance hearings for those taxpayers who wish to contest their appraisals. 32 V.S.A. § 4221. Decisions of the listers may be appealed to the board of civil authority, and the listers may appear before the board to defend the appraisals in question. 32 V.S.A. § 4404.

The lister sits as part of the board of tax abatement to determine whether a taxpayer may have his or her taxes abated. 24 V.S.A. § 1533. If a board of listers feels that they need assistance to complete an appraisal then they may, with the approval of the selectboard or by vote of the town, employ such assistance. 32 V.S.A. § 4041. The director of the Division of Property Valuation and Review approves contract appraisers. 32 V.S.A. § 4052(a).

For more information about the lister's roles and responsibilities, please consult the *Vermont Listers Handbook* (2008) available from the Vermont Department of Taxes online at <http://www.state.vt.us/tax/pdf.word.excel/pvr/listerhandbk.pdf>.

## CHAPTER 22. INSPECTOR OF LUMBER, SHINGLES, AND WOOD

### *Roles and Responsibilities*

**The inspector of lumber, shingles and wood is an office that has not been filled in most Vermont towns for many decades. This official, which may be appointed by the selectboard (24 V.S.A. § 871(3)), was responsible for ensuring that consumers received a fair deal from local merchants and dealers in building products and heating wood. With the advent of consumer protection laws and better business bureaus, this position is no longer essential to the community.**

- The inspector's duties were, upon request of the consumer, to examine, measure, and classify the quality of lumber, shingles, and wood sold within the town, and, if the goods met certain conditions (unspecified in the statute), to issue a certificate that presumably assured the public of the merchant's integrity. 24 V.S.A. § 1031.
- The inspector's fees were paid by the consumer, who was charged \$0.04 a cord for the first ten cords of wood measured, and \$0.01 for each additional cord. For measuring lumber and shingles, the inspector charged \$0.25 for every 1,000 feet measured. 32 V.S.A. § 1676.

Today, there are other avenues for consumers to take if they feel shortchanged by a merchant from whom they have bought building materials or cordwood. The Vermont Agency of Agriculture, Food and Markets' Consumer Assurance Section will, on consumer complaints, send inspectors out to measure cordwood. However, the best avenue for a consumer to follow if he or she feels that a seller is reneging on his or her obligation is to contact the Consumer Assistance Program of the Attorney General's office ([www.atg.state.vt.us/issues/consumer-protection.php](http://www.atg.state.vt.us/issues/consumer-protection.php)).

The Consumer Assistance Program, with information from the consumer, will file a complaint with the business cited by the consumer. One copy of that complaint will be sent to the consumer, and another will be kept on file in the Consumer Assistance Program office, where it is open to the public. The complaint to the parties involved is accompanied by a letter urging them to settle the matter. If there are many complaints against the same business, the Consumer Division of the Attorney General's office assigns an investigator to the case. An enforcement action is taken if the investigator believes that Vermont's consumer protection laws were violated.

## CHAPTER 23. MODERATOR

### *Roles and Responsibilities*

**For the majority of Vermont towns that vote on town business and elect officers at an annual open town meeting (i.e. “from the floor”), the moderator is a very visible and very important official. The moderator is the presiding officer at town meetings and it is he or she who conducts the annual meeting, who keeps order, and who ensures that the business of the meeting proceeds in a fair and efficient manner and that those who wish have an opportunity to participate in the process.**

The moderator is the first official who is elected after town meeting convenes. He or she serves for a term of one year. 17 V.S.A. § 2646(1). The moderator does not have to be sworn before taking office. 24 V.S.A. § 831. If the moderator is absent, a selectboard member presides until a moderator *pro tempore* is chosen. 17 V.S.A. § 2657.

The moderator usually reviews the proposed warning of the annual meeting with the selectboard (if it agrees to this) to ensure that the questions are written and ranked properly. The moderator should review the warning prior to the meeting, and should discuss with the selectboard who will move and second each item after it has been read.

The moderator must follow reasonable and necessary procedures to ensure that persons who are not voters of the town do not vote. 17 V.S.A. § 2656. Non-voters may not participate in the meeting without permission of the assembly.

The moderator calls the meeting to order at the appointed time, announces its business, decides all questions of order, makes public declarations of the votes (except Australian ballot votes), and preserves order and decorum at all times. 17 V.S.A. §§ 2658, 2659. The moderator may have a persistently disorderly person removed by the constable, and a person who refuses to leave may be fined up to \$200. 17 V.S.A. § 2659.

Under 17 V.S.A. § 2658, “Robert’s Rules of Order” or some other rule of order adopted by the town must be used to govern town meeting. However, when state statute provides for particular rules of procedure, those rules will take precedence over *Robert’s*. For example, state law permits a vote by paper ballot if requested by seven voters, unless the town has provided for some other procedure. (In contrast, *Robert’s* requires a majority vote.) 17 V.S.A. § 2658. A meeting can be “divided” on the request of one voter, requiring all those who voted in favor to stand and be counted, and then all those opposed to do the same. 17 V.S.A. § 2658. Unlike *Robert’s Rules*, state law prohibits reconsidering or rescinding an article that has been voted on once the assembly has begun work on another article. 17 V.S.A. § 2661. Additionally, action can only be taken on warned articles, which means that amendments to warned articles must be germane, and items taken up as “other business” cannot be binding on the town. 17 V.S.A. § 2660(d).

The moderator is often improperly requested to perform responsibilities that go beyond the role of his or her office. For example, the moderator may be called upon to determine the eligibility of a particular voter or to decide whether a particular motion or amendment is legal. The moderator may know if the challenged voter, is, in fact, eligible to vote or if the amendment is legal, but he or she must ask the board of civil authority to rule on the former and the town attorney to provide advice on the latter question.

For more information on the position of town moderator, please consult *A Handbook for Vermont Moderators* (2009) published by the Vermont Secretary of State’s Office and available online at <http://www.sec.state.vt.us/>. Copies of *Robert’s Rules of Order, Newly Revised 11<sup>th</sup> edition* are available for purchase online at [www.vlct.org/bookstore/](http://www.vlct.org/bookstore/).



## CHAPTER 24. MUNICIPAL MANAGER

### *Roles and Responsibilities*

**In towns that have adopted the town manager form of government, the town manager is the primary administrator of the local government and is charged with the general supervision of the affairs of the town. 24 V.S.A. § 1235. The manager oversees personnel, makes purchases for the town, maintains the town buildings, and manages the administrative tasks that are ordinarily dealt with by the selectboard. The manager has much independent authority but is subject to the supervision and control of the selectboard.**

- **Selection.** The manager is not a political appointee, and as such must be selected based on his or her qualifications and not because of his or her political beliefs. 24 V.S.A. § 1233.
- **Removal.** The manager holds office at the will of the selectboard, and may be removed at any time, for cause, by majority vote of the board. 24 V.S.A. § 1233.
- **Compensation.** The manager's compensation is set by the selectboard unless otherwise voted by the electorate. 24 V.S.A. § 1239.
- **Duties.** The manager must perform all duties not committed to the care of a particular officer and those duties conferred by law on the selectboard, except for certain enumerated functions described later in this chapter. 24 V.S.A. § 1236(1), (2). In addition, the manager has the authority to perform the following functions:

**Purchasing Agent.** The manager purchases supplies for every department of the town over which the manager has control. 24 V.S.A. § 1236(3).

**Building Supervision.** The manager must supervise the management and repair of all town buildings, manage town school district buildings upon request of the school directors, and must oversee all new building done by the town or school unless otherwise specially voted. 24 V.S.A. § 1236(4).

**Road Commissioner.** The manager shall perform all duties ordinarily conferred upon the road commissioner. 24 V.S.A. § 1236(5).

**Accounting.** The manager must do the accounting for all town departments and for the school district, upon request of the school directors. 24 V.S.A. § 1236(7).

**Spending.** The manager must supervise all special appropriations of the town unless otherwise voted. 24 V.S.A. § 1236(8).

**Supervision of Specific Matters.** The manager shall supervise and have control over the police and fire departments, municipal licenses, the system of sewers and drainage, street lighting, highways and bridges, sprinkling of streets, and maintenance of parks and playgrounds. 24 V.S.A. § 1236(9).

**Tax Collection.** The manager shall collect current and delinquent taxes for the town if the town so votes. 24 V.S.A. § 1236(10).

**Adoption/Repeal of Town Manager Form of Government.** In Vermont, the electorate can choose to adopt the town manager form of government. To do so, five percent of the legal voters must petition the selectboard to place on the warning at the annual or special meeting of the town an article “[t]o see if the town will vote to take advantage of the provisions of Chapter 37 of Title 24 of the Vermont Statutes Annotated and authorize the selectboard to employ a town manager.” 24 V.S.A. § 1241. The selectboard may also choose to place such a ballot item on the warning without petition. The town manager form of

## CHAPTER 24. MUNICIPAL MANAGER

government is adopted if the article is approved by a majority of the voters present and voting. 24 V.S.A. § 1240.

The matter of whether to adopt a town manager form of government must be voted in whatever manner town officers are elected in the town. Thus, if officers are elected by Australian ballot, the question of whether a town shall adopt the town manager form of government must appear below the list of candidates to be voted. 24 V.S.A. § 1243.

A town may revoke the town manager form of government by a majority of voters present and voting at a special or annual meeting. Note that, like adoption of the town manager form of government, the vote to reject the same must be made in the same form used for the election of officers, and the article may be added to the warning by petition of five percent of the eligible voters. If approved, the vote will become effective 30 days after the date of its adoption. 24 V.S.A. § 1242.

**Appointment Generally.** The selectboard of towns that have adopted a town manager form of government must proceed “forthwith” to appoint a manager. The manager does not have to be a resident of the town, and two or more towns may form a union to employ one shared manager. 24 V.S.A. § 1232. Note that a manager may not hold any elective office in the town or town school district. 17 V.S.A. § 2647.

The manager must be selected with reference to his or her education, training, and experience to perform the duties of the office. The position is not a political appointment, and, as such, should be made without reference to the manager’s political beliefs. 24 V.S.A. § 1233.

In all matters, the manager is subject to the direction and supervision of the selectboard and shall hold office at the will of the board. The selectboard may, by majority vote, remove the manager at any time for cause. 24 V.S.A. § 1233.

After his or her appointment, the manager must be sworn to the faithful performance of his or her duties. The manager must also give bond to the town in such amount and with such sureties as the selectboard requires. 24 V.S.A. § 1234. Note, however, that the town must pay the cost of the bond. 24 V.S.A. § 835.

The manager’s compensation is set by the selectboard unless it is specifically established by the voters. 24 V.S.A. § 1239. In most communities, the manager is hired by contract for a period of years which guarantees a particular compensation package. The question is sometimes raised as to whether the selectboard has the authority to enter into such a contract, insofar as it may bind future selectboards. The Vermont Supreme Court has held that municipal legislative bodies may not enter into contracts that purport to restrict the future exercise of their legislative authority or their police powers. *Vt. Dept. of Public Service v. Mass. Municipal Wholesale Electric. Co.*, 151 Vt. 73, 81–82 (1989). Because a decision to hire or fire a manager is administrative, there is no limitation on the right to contract. However, if a future board is not satisfied with the manager, it may dismiss the manager for cause. Absent a provision in the contract that would permit a future board to terminate the contract, the manager would have the right to sue to enforce the contract. Some communities try to prevent such a lawsuit by anticipating the possibility of termination in the contract, and providing for a severance package in the event that a future board chooses to end the employment relationship.

**Power and Authority.** The manager is responsible for the general supervision of the affairs of the town. He or she is the administrative head of all departments and is responsible for all duties not otherwise conferred upon another town officer. 24 V.S.A. §§ 1235, 1236(1). In addition, the manager must assist the selectboard and may perform all duties committed to the selectboard *except* for the following:

## CHAPTER 24. MUNICIPAL MANAGER

- Preparing the tax bill.
- Signing orders on the general fund of the town other than orders for poor relief.
- Calling special or annual town meetings.
- Laying out highways.
- Establishing and laying out public parks.
- Making assessments.
- Awarding damages.
- Acting as a member of the board of civil authority.
- Filling vacancies.

24 V.S.A. § 1236(2).

The manager is in charge of the general administration of the town. He or she is the general purchasing agent for the town and purchases supplies for every department under his or her control. The manager may also buy supplies for departments not under his or her control and for the school district upon proper requisition by the departments or the school directors. 24 V.S.A. § 1236(3).

The manager is in charge of all town buildings and supervises their maintenance and repairs. The manager may have the same authority over school buildings upon request of the school directors, and may oversee all building done by the school district or town, unless otherwise specially voted. 24 V.S.A. § 1236(4).

The manager may supervise and expend all special appropriations of the town as if it were a separate department of the town, unless otherwise voted by the town. 24 V.S.A. § 1236(8). The manager is also charged with the general accounting for the town and the town school district, upon request of the directors. This role does not supersede the authority of the town and school treasurer, but contemplates that the manager will work with the treasurer for access to the records so that the manager can keep accurate accounts of all departments of the town. 24 V.S.A. § 1236(7). Note that the statutes specifically provide the manager with access to all town books and papers for information necessary for the proper performance of his or her duties. 24 V.S.A. § 1237.

The manager has charge and control of all departments, and is specifically granted authority to supervise the police and fire departments, including setting salaries and appointing and removing officers and employees. 24 V.S.A. § 1236(9)(A),(B). Note, however, that this authority must be read together with the statutory provisions that govern police and fire departments. For example, 24 V.S.A. § 1954 provides that firefighters are to be appointed by the fire chief and may be dismissed or suspended by the chief, with an appeal of this action going before the selectboard. The combination of sections 1236 and 1954 requires the manager to work together with the fire chief in making appointments to the department, and allows the chief to make the initial decisions about suspension or removal, providing that appeals of the decision are taken to the manager (rather than the selectboard, since the manager may perform all duties of the board).

Twenty-four V.S.A. § 1931 recognizes the manager's authority over the police department by authorizing the manager to establish a police department and appoint a chief and police officers. Except for the authority to appoint, remove, and set compensation, direction and control over the police force are vested in the chief of police.

The town manager performs the functions of the road commissioner. This means that no road commissioner may be elected at an annual meeting. However, there may be an exception to this general rule where an incorporated village exists within the town. 24 V.S.A. § 1236(5).

## CHAPTER 24. MUNICIPAL MANAGER

The town may vote to have the town manager act as tax collector for the town. This decision will remain in effect until the town votes otherwise. In that capacity, the manager may collect the same fees as a collector of taxes, and those fees must be paid into the town treasury. 24 V.S.A. § 1236(10).

In addition to performing any function granted by statute to the selectboard, the manager is given specific authority to control and supervise any system of licenses not otherwise regulated by law, to maintain the parks and playgrounds of the town, to supervise and control the system of sewers and drainage, and the sprinkling and dusting of streets, except for making assessments for these services. 24 V.S.A. §1236(9).

The question sometimes arises in communities that use a town manager form of government as to whether the manager can act independently from the selectboard, or whether the manager is completely controlled by the board. For example, selectboards and managers often disagree about personnel matters – whether to hire a particular individual or whether a particular employee should be fired. In such cases, 24 V.S.A. § 1233, which subjects the manager to the “direction and supervision” of the board, and 24 V.S.A. § 1235, which grants the manager general supervisory authority over all town matters, must be balanced. As a practical matter, the manager may use his or her judgment and hire or fire as he or she sees fit. However, if the manager’s judgment is adverse to the “direction” of the board, the board may vote to remove the manager from office for insubordination.

## CHAPTER 25. PLANNING COMMISSION

### *Roles and Responsibilities*

**A planning commission may be created at any time by the selectboard. The commission must have at least three and no more than nine voting members. The majority of the commission must be residents of the municipality. Planning commissioners are typically appointed by the selectboard, which also sets their term lengths. An appointed planning commissioner may be removed at any time by a unanimous vote of the selectboard. Appointments to fill vacancies are for unexpired terms. 24 V.S.A. § 4323. Alternatively, a municipality may vote to elect planning commissioners for terms of one to four years. In an urban municipality, the selectboard may create a planning department headed by a planning director who will exercise all the powers and duties of the planning commission. The planning director is subject to such regulations as the selectboard specifies. The selectpersons of a “rural town” or not more than two elected or appointed officials of an “urban municipality” are non-voting ex officio members. An energy coordinator may also be a non-voting ex officio member. 24 V.S.A. § 4322.**

**(Please see also Chapter 4, *Appropriate Municipal Panel*)**

Following are the powers and duties of planning commissions as specified in 24 V.S.A. § 4325. Any planning commission created under Title 24, Chapter 117 may:

- Prepare a municipal plan and amendments thereof for consideration by the selectboard, and review amendments initiated by others as set forth in 24 V.S.A. Chapter 117, subchapter 5.
- Prepare and present to the selectboard proposed bylaws and make recommendations to the selectboard on proposed amendments to such bylaws as set forth in 24 V.S.A. Chapter 117, subchapter 6.
- Administer bylaws adopted under 24 V.S.A. Chapter 117, subchapter 6, unless a development review board performs this function.
- 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.
- Prepare and present to the selectboard recommended building, plumbing, fire, electrical, housing, and related codes and enforcement procedures and construction specifications for streets and related public improvements.
- Prepare and present a recommended capital budget and program for a period of five years, as set forth in 24 V.S.A. § 4440, for action by the selectboard.
- Hold public meetings.
- Require from other departments and agencies of the town such available information as relates to the work of the planning commission.
- Enter upon land to make examinations and surveys in the performance of its functions.
- Participate in a regional planning program.

## CHAPTER 25. PLANNING COMMISSION

- Retain staff and consultant assistance in carrying out its duties and powers.
- Undertake comprehensive planning, including related preliminary planning and engineering studies.
- Perform such other acts or functions as it may deem necessary or appropriate to fulfill the duties and obligations imposed by and the intent and purposes of Title 24, 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 must 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 municipal charter sets forth requirements for the appointment and authority of town planning officials that are inconsistent with law, the charter will rule. 24 V.S.A. § 4328.

The planning commission has party status in Act 250 proceedings. 10 V. S. A. § 6085 (c)(1)(C). The decision to participate in an Act 250 proceeding is an action taken by the commission and, as with all decisions, must occur in the context of a public meeting. In making its decision to participate, the planning commission should examine the reasons to participate and determine whether it will seek representation.

## CHAPTER 26. POUNDKEEPER

### *Roles and Responsibilities*

**The poundkeeper is an individual (or organization) who may care for animals that are impounded by the town. Animals can be impounded for a variety of reasons, including mistreatment by their caretakers, running at large, worrying other animals or people, or if rabies infection is suspected. The poundkeeper is responsible to feed and care for the animals until they are reunited with their owner, sold, or humanely destroyed. As a practical matter, in many towns the poundkeeper is the veterinarian, the local constable, or the Humane Society. In other towns, an individual may be appointed to fill this position.**

**Appointment.** The town poundkeeper may be appointed by the selectboard until he or she resigns, retires, or is replaced. The selectboard is not required to appoint a poundkeeper. The poundkeeper is not required to be a resident of the town. 24 V.S.A. § 871(2).

**Maintenance of a Pound.** Each town is expected to maintain one or more pounds, if necessary. The pounds may be in an adjacent town if the adjacent town consents. 20 V.S.A. § 3381. If a town fails to maintain a pound for six months, it will be fined \$30.00. 20 V.S.A. § 3382. If a town has no pound, an individual wishing to impound an animal may do so in an enclosure, but must notify the animal's owner of its location. 20 V.S.A. § 3383.

**Regulations.** The selectboard may adopt regulations that govern the pound, so long as they do not contradict matters regulated by state statute. 20 V.S.A. § 3381.

**Animals Subject to Impoundment.** A town may impound an animal if:

- It is found in an individual's (not the owner's) enclosure doing damage. 20 V.S.A. § 3411.
- Stallions, cattle, horses or swine are running at large. 20 V.S.A. §§ 3451, 3454.
- Domestic pets (cats, dogs, and ferrets) and wolf-hybrids are running at large in violation of the law, are suspected of having been exposed to rabies, are known to have been attacked by another animal that may be either rabid or wild, or whose rabies vaccination history is unknown. 20 V.S.A. § 3806.

**Security to Poundkeeper.** A poundkeeper may require that the individual impounding an animal to his care provide security to recompense him or her for keeping and caring for the animal. 20 V.S.A. § 3384. If the individual does not provide this security within 24 hours, the poundkeeper may release the animal to its owners. 20 V.S.A. § 3384.

**Caring for Impounded Animals.** The poundkeeper must supply an impounded animal with food and water and is liable to pay the owner of any damages occasioned by neglecting to do so. 20 V.S.A. § 3412.

**Notice to Owner.** A person who impounds an animal must notify the owner within 24 hours after the animal's impoundment, either personally or in writing. That notice must require the animal's owner to present him or herself to the impounder to arrange for appraisal of the damages the animal has done. 20 V.S.A. § 3413. Failure to provide such notice to the owner shall result in penalties to the impounder. 20 V.S.A. § 3414.

**Damages.** When an impounded animal has done damage – such as a cow that jumps a fence and devours a neighbor's garden – there must be an appraisal of that damage. If the owner comes to claim the animal, he or she may appoint someone to assess the damage. This individual, along with one appointed by the poundkeeper, will determine the amount to be paid to the injured party. If they cannot agree on the amount, they may appoint a third person to assess the damages. 20 V.S.A. § 3415. If the owner does not

## CHAPTER 26. POUNDKEEPER

appear or if none of the appointed appraisers can agree on the damages to be paid, the poundkeeper can take the problem to a district judge, who has the power to appoint appraisers whose decision shall be binding on the parties. 20 V.S.A. § 3417. The poundkeeper may not release the animal until the damages are paid, but once paid, the animal must be released. 20 V.S.A. § 3416.

**Unclaimed Animals.** If the owner does not appear to claim his or her animal, it may be sold by the poundkeeper after giving a 48-hour notice to the owner. 20 V.S.A. § 3419. If the owner is unknown, the poundkeeper must post notices within the town and adjoining towns describing the animal and time and place where it was impounded. 20 V.S.A. § 3420. The poundkeeper must wait 30 days before the animal can be sold. After that time, the animal may be sold at public auction, after six days' notice posted in a public place in the town. 20 V.S.A. § 3421. To prevent the sale, the owner must pay the damages done by the animal, the charges of impounding and keeping the animal, and the cost of advertisement. 20 V.S.A. § 3421.

**Proceeds from the Sale of Animals.** The proceeds from the sale must first be applied to the damage done by the animal (determined by the fence viewers), and then to the expenses of impounding, keeping, advertising, and selling the animal. Any money left over must be given to the town treasurer, to be paid to the animal's owner if he or she requests payment within one year of the sale. If the owner does not request the remaining money, it is to be included in the town treasury. 20 V.S.A. § 3422.

**Record of Sale:** After a sale of an animal, the impounder must give to the town clerk for recording a description of the animal, an account of the damages, charges and expenses, and the sum for which it was sold. 20 V.S.A. § 3423.

**Cruelty to Animals.** In some situations, the poundkeeper may also be appointed by the local board of health as the town's "humane officer." In many towns, the poundkeeper is also the local chapter of the Humane Society, which is governed by the Vermont Animal Welfare Act. In such cases, the poundkeeper may also be charged with the prevention of cruelty to animals, which includes mistreatment, abuse, starvation, etc. of one animal or an entire herd. 13 V.S.A. §§ 351, et seq. If the humane officer has probable cause to believe that animals are being abused, he or she may obtain a warrant to search and seize the animals in question. 13 V.S.A. § 354(b)(2). If a humane officer witnesses a situation in which the animal's life is in jeopardy and immediate action is needed, he or she may seize the animal without a warrant. 13 V.S.A. § 354(b)(3). Animals thus seized must be provided suitable care. If such care cannot be given, the animal may be humanely euthanized, and all costs associated with the care and/or euthanasia may be recovered from the owner. An animal that is not euthanized may be kept in custody until it is in suitable condition to be returned and the owner has arranged for its proper care and has paid all costs of its custody, or until other arrangements have been made by the court. 13 V.S.A. § 354.

If the poundkeeper or humane officer believes that an animal within the town is being mistreated, he or she should contact the Vermont Agency of Agriculture, Food and Markets, 802-828-2430, or the state public health veterinarian through the Vermont Department of Health, 802-863-7200, for assistance. Note that **cruelty to animals is a criminal offense**, so the town attorney, law enforcement officer, and the state's attorney may be helpful in providing advice and assisting with enforcement.



## CHAPTER 27. ROAD COMMISSIONER

### *Roles and Responsibilities*

**The road commissioner plays an important but limited role in many Vermont towns as the individual charged by the selectboard to maintain the town's highways. The road commissioner has no independent authority to act, and can only carry out the orders of the selectboard. This is true whether the road commissioner is elected by the voters or is appointed by the selectboard.**

**History.** The office of the road commissioner has had a long and interesting history. Beginning in 1799, the General Assembly gave the selectboard in each town the responsibility “to lay out and alter highways.” These first highway laws provided for a kind of draft of all male inhabitants from the ages of 16 to 60 (with the exception of ministers) to work on the roads of their own towns under the direction of a town surveyor (the precursor to the modern road commissioner), for a four-day period each year. The individuals on the road crews were credited with 18 shillings a day, to be paid at the end of the four-day period. To keep absenteeism to a minimum, each worker was fined 30 shillings for each lost work day. In the event that the fine amounted to more than the work credit, the town was empowered to collect the difference by selling off enough personal property of the “draft dodger” to pay the debt! This same work crew could also be summoned by the surveyor to repair highways damaged during a natural disaster.

In 1827, the General Assembly appointed commissioners from each county to supervise the roads. The practice was abolished in 1830 but reinstated many years later, with the county commissioners having much less power than their predecessors. Today, county commissioners may still be appointed annually by county judges to serve as an appeal body from decisions of the selectboard in case the board fails to act on complaints to repair a highway or bridge in the county, or in decisions with respect to the laying out, reclassifying, and discontinuing of roads. 19 V.S.A. §§ 970, 971.

By 1850, changes in highway law enabled selectboards to present candidates for the post of town surveyor of the several local highway districts established in the town. The town could elect either surveyors or road commissioners; a choice that remained with the electorate until 1892, when the post of surveyor was abolished and the office of road commissioner permanently substituted. In that year, responding to shrill criticism, the General Assembly put the roads under the supervision of a state highway commission to oversee local roads, and provided for the election of a local road commissioner in each town with specific statutory duties and the financial wherewithal from local taxes to do the job. In fact, the Vermont Supreme Court recognized the independent authority of the road commissioner and held that the selectboard could not interfere with the road commissioner or dictate how he did his job. (They were all men back then.) *Couture v. Selectmen of Berkshire*, 121 Vt. 359 (1960).

In 1973, the General Assembly removed the independent authority of the road commissioner and gave the selectboard responsibility for maintaining local roads and for supervising and guiding the work of the road commissioner. Shortly after this change in law, the General Assembly abolished the position of road commissioner as an elective office and gave to the selectboard the power of appointment of a road commissioner, with all its attendant powers, duties, and responsibilities, including the power of removal for just cause after a legally-warned hearing. However, this change was not popular, so in 1976 the General Assembly returned to voters the option of electing a road commissioner if they so chose. Nevertheless, the selectboard continues to oversee the work of the road commissioner, whether he or she is appointed by the board or elected by the people.

**Election/Appointment.** Road commissioners (one or two) can either be elected by ballot or appointed to office. They serve for a one-year term, unless the town votes they serve for a two- or three-year term. The term length remains in effect until rescinded by the voters. 17 V.S.A. § 2646(16).

## CHAPTER 27. ROAD COMMISSIONER

According to 17 V.S.A. §§ 2646(16) and 2651(a), one or two road commissioners are to be appointed by the selectboard unless the town has voted to have the commissioners elected. If voters want to have the road commissioner elected, they must petition the selectboard at least 40 days prior to the annual town meeting to insert an article in the warning on the question of whether or not the town shall elect a road commissioner. 17 V.S.A. § 2652. If the voters choose not to elect a road commissioner, then the selectpersons will continue to appoint someone to that office. If the town votes to return to the election process to choose a road commissioner, the election of a specific individual to fill that position will be held at the following annual meeting. If the town has voted to elect its road commissioner, in order to go back to appointing the commissioner, there must be a vote at an annual meeting to reauthorize the selectboard to appoint the commissioner.

- An elected commissioner must be a legally qualified voter of the town. However, there is no requirement that an appointed road commissioner be a resident of the town. 17 V.S.A. § 2646(16), 2651(a).
- If it chooses, the selectboard may appoint one or two members of the selectboard to serve as road commissioner. 17 V.S.A. § 2651(a).

**Town Managers.** In communities that have adopted the town manager form of government, the town manager acts as the local road commissioner, so no other road commissioner may be elected or appointed. 24 V.S.A. § 1236(5).

**Removal.** An appointed road commissioner may be removed by the selectboard for “just cause” and after “due notice” and a hearing. This means that if the selectboard has good reason, it may remove the road commissioner, but only after informing him or her of the reasons and providing a hearing before the board. 17 V.S.A. § 2651. Elected road commissioners cannot be removed from office.

**Duties.** The road commissioner must work closely with the selectboard to maintain the town highways and to keep the bridges, culverts, and roads in good repair. 19 V.S.A. § 303. The road commissioner generally supervises the road crew and makes suggestions to the selectboard with respect to personnel matters. In addition, in many towns the road commissioner regularly reports to the selectboard on the status of the town roads and requests specific expenditures, suggests when roads should be reclassified, and sees that roads are properly graded, surfaced, graveled, and maintained for winter use.

**Compensation.** The selectboard determines the town road commissioner’s pay, which cannot be less than \$2.00 per day for time actually spent and must be drawn from the transportation fund. 32 V.S.A. §1225.

## CHAPTER 28. SELECTBOARD

### *Roles and Responsibilities*

The selectboard is at the center of Vermont's local government. It is the body that has general supervision and control over the affairs of the town. 24 V.S.A. § 872. The selectboard performs three primary functions: legislative (enacts local ordinances, regulations, and policies); administrative (prepares and presents the budget, oversees all town expenditures, supervises personnel, and controls town buildings and property); and quasi-judicial (determines private rights in such areas as laying out, discontinuing, and reclassifying highways, and hearing appeals as the local board of health and as the local liquor control commission).

**Election.** At the annual town meeting, one selectboard member is elected for a term of three years. 17 V.S.A. §§ 2646(4), 2649. The result is that towns have a board of three members with staggered terms. If the voters wish, they may vote to elect two additional selectboard members for staggered one- or two-year terms each. 17 V.S.A. § 2650(b). A vacancy on the board shall be filled by appointment made by the remaining selectboard members until the next special or annual meeting. If the majority of selectboard seats are vacant, a special meeting must be called for the purpose of filling the vacancies. If all of the positions are vacant, the secretary of state will call a special election. 24 V.S.A. § 963.

**Compensation.** The selectboard's compensation may be set at the annual meeting by the voters. However, if no compensation is set, the auditors must fix the compensation at the time of the town audit. If the town has voted to eliminate the office of auditor and the town does not fix the compensation, the selectboard shall continue to be compensated at the rate set the previous year. 24 V.S.A. §§ 932, 933. With the exception of a few small towns that are not covered by Social Security, the town must treat the selectboard as employees for tax purposes, issuing a W-2 form and taking out the usual withholding.

**Authority.** The selectboard may act only by the concurrence of a majority of its members. 1 V.S.A. § 172. Individual members have no power to bind the town without authorization from the board. See *State v. Baldwin*, 116 Vt. 112 (1949). The selectboard has authority over the general supervision of the town and may perform all duties required of the town and town school district not committed to the care of a particular officer. 24 V.S.A. § 872. This means that the board has expansive authority, but cannot control other elected officials who have independent statutory authorization. *Town of Bennington v. Booth*, 101 Vt. 24 (1928).

**Organizational Meeting.** At its organizational meeting, the selectboard sets its regularly scheduled meeting, adopts a rule of procedure (not necessarily "Robert's Rules of Order"), elects a chair and, if so voted, a clerk from the board's membership. 24 V.S.A. § 871. Every meeting of the selectboard is subject to Vermont's Open Meeting Law. This means that notice of the date, time, and place of the regularly scheduled meeting must be clearly designated by charter, regulation, ordinance, bylaw, or resolution, and the agenda of each meeting must be made available upon request prior to the meeting. Special meetings must be publicly announced 24 hours in advance. Notice of the meeting must be provided by posting an announcement in the town clerk's office and two other public places, and by notifying members of the board and news media that have requested such notification. Emergency meetings may be called, without public announcement, in order to respond to an unforeseen occurrence that requires the immediate attention of the board, provided some notice is provided as soon as possible prior to the meeting. 1 V.S.A. § 312.

**Administrative Functions.** The administrative functions of the selectboard include the following. This list is not exhaustive, but is meant to illustrate the many administrative powers of the board.

## CHAPTER 28. SELECTBOARD

- **Overseeing the Highways and the Business of the Town.** The selectboard is responsible for the general supervision over the affairs of the town. It is the body that must ensure that the town buildings, property, and equipment are in good working order and are properly maintained. The board contracts with providers of goods and services to the town, and must ensure that the town roads are in good and sufficient repair. 19 V.S.A. §§ 303, 304; 24 V.S.A. § 872.
- **Town Funds.** The selectboard prepares the budget for voter authorization, sets the tax rate, and decides when or if it is necessary to borrow to pay for current expenses in anticipation of taxes. The selectboard controls the expenditure of almost all town funds insofar as the town treasurer cannot pay out from town funds unless he or she has an order signed by an authorized member of the selectboard. 17 V.S.A. § 2664; 24 V.S.A. §§ 872, 1623.
- **Personnel.** The selectboard is in charge of managing, hiring, and firing all personnel, unless the town has adopted a town manager form of government. This includes adopting rules relating to personnel administration (which will not apply to elected officials who are independent from the selectboard). The selectboard also appoints various officials, fills vacancies, sets the bond for elected officials when required by law, and sets the compensation for officials when the voters have not set a specific salary. 24 V.S.A. §§ 832, 933, 961, 963, 1121, 4323, 4448, 4460.
- **Legal Representative of the Town.** The selectboard has exclusive control over all litigation involving the town. It is the only body that can initiate or settle suits or hire an attorney on behalf of the town. 24 V.S.A. § 872. *Cabot v. Britt*, 36 Vt. 349 (1863); *Lawton v. Town of Brattleboro*, 128 Vt. 525 (1970).
- **Legislative Function.** The selectboard is the legislative body of the town. It may enact ordinances that cover all areas in which the legislature has provided local authority to regulate. This includes animal control, noise, open container, public assemblies, local entertainment, public nuisance, streets and highways, solid waste, signs, telecommunications facilities, and itinerant vendors, to name a few. Authority for many of these areas is found in 24 V.S.A. § 2291, but others are scattered throughout the statutes. Ordinances must be designated either criminal or civil and adopted by a majority of the board at a regular or special meeting of the board warned for that purpose. The ordinance must be posted and published and will go into effect 60 days after its adoption unless five percent of the voters petition for a permissive referendum, in which case the ordinance becomes effective only upon approval of the voters. 24 V.S.A. Chapter 59.
- **Quasi-Judicial Function.** The selectboard acts as a quasi-judicial body when it hears appeals from decisions of the health officer, when it holds a hearing about an alleged vicious dog, when it determines personnel matters, when it acts as the local liquor control commissioners, when it acts on the board of abatement, when it determines whether to lay out, reclassify, or discontinue town highways, and when it acts as part of the board of civil authority. 7 V.S.A. § 236; 18 V.S.A. § 127; 19 V.S.A. §§ 708 et seq.; 20 V.S.A. § 3546; 24 V.S.A. § 1533; 32 V.S.A. § 4404.

For more information about the role and responsibilities of the selectboard, please consult VLCT's *Handbook for Vermont Selectboards* (2011). This handbook may be viewed (under "League Resources") or purchased (under "Marketplace") online at [www.vlct.org](http://www.vlct.org).

## CHAPTER 29. SEWER COMMISSIONER

### *Roles and Responsibilities*

**The selectboard members of a town, the trustees of a village, the prudential committee of a fire or lighting district, or the mayor and board of aldermen of a city shall constitute a board of sewage disposal or sewage system commissioners, unless the legislative body appoints a separate body to act as commissioners. 24 V.S.A. §§ 3506, 3614. If the board is appointed, its members must be legal voters of the municipality, who may be removed from office by the legislative body for “just cause” after notice and hearing.**

**The sewer commissioners oversee the operation of the municipal “sewage system,” and the sewage disposal commissioners oversee the “sewage disposal plant” under 24 V.S.A. Chapters 97 and 101, respectively. A sewage system includes only the pipes and sewers needed to convey sewage to a sewage disposal plant. A town may have either a single board or separate sewage system and sewage disposal system boards. 24 V.S.A. § 3506(b).**

A legislative change in 2001 seems to have brought chapters 97 and 101 into harmony, and a single board may now oversee both municipal sewage systems and sewage disposal plants. A commissioner on a joint board must be familiar with 24 V.S.A. Chapters 97 and 101 in order to understand his or her authority and duties. Some of the key powers granted to these commissioners include:

- purchasing real estate and easements necessary for the commission’s purposes;
- constructing, maintaining, operating, and repairing a sewage system;
- borrowing money, levying and collecting taxes;
- setting rates and charges;
- entering onto land;
- enforcing liens;
- bonding; and
- passing ordinances.

## CHAPTER 30. TOWN ADMINISTRATOR

### *Roles and Responsibilities*

Increasingly, selectboards are hiring assistants to aid with the efficient operation of town government. These assistants have many titles, including town administrator, administrative assistant, or selectboard clerk. This role has variable responsibilities depending on the selectboard and the community. Unlike a municipal manager, the authority of the town administrator or selectboard assistant is not governed by statute, and consists of duties delegated by the selectboard (outlined in a job description or possibly laid out in a town charter). A town administrator has no independent authority and acts under the direction of the selectboard.

An administrator's duties may include performing administrative functions such as providing support services of a clerical nature to the legislative body, and acting as an intermediary among town departments, citizens, and the legislative body, including some departmental oversight. An administrator typically does not have the authority to hire or fire employees. Generally, administrators are a "Jack or Jill" of all trades who perform work not assigned to any other elected official. They also assist the legislative body with using its time wisely.

The selectboard has the authority to create the position of town administrator. The selectboard-administrator relationship may be guided by an employment contract, but otherwise the administrator's employment is similar to that of any other municipal employee, who is subject to a personnel policy and serves at the will and direction of the legislative body.

For more information on the role of the town administrator, sample job descriptions and other information, please contact VLCT's Municipal Assistance Center at 800-649-7915.

## CHAPTER 31. TOWN SERVICE OFFICER

### *Roles and Responsibilities*

The town service officer is charged with assisting individuals within the town who require emergency food, fuel, or shelter. He or she is the municipal official who administers the “general assistance” program after normal business hours of the Vermont Economic Services Division. This program provides emergency financial assistance to help Vermont’s residents and those transients in the state who have nowhere else to turn and require support. The town service officer will provide support within program limits to assist a family or individual until the Vermont Economic Services Division office is next open. General assistance consists of financial aid for food, emergency temporary housing, clothing, transportation, electricity, fuel, and medical care.

- The town service officer receives applications for assistance, investigates to determine eligibility, grants funds advanced to him or her for emergency general assistance, and performs such other duties, including investigations, as the state commissioner of the Department for Children and Families may direct. 33 V.S.A. § 2102.
- When an individual contacts the service officer for assistance, the officer must determine if the individual is eligible, and then notify the district social welfare director of his or her findings. To obtain eligibility requirements, contact the Vermont Department for Children and Families Economic Services Division at 800-479-6151. However, if the officer believes that an individual who is applying for or receiving assistance came into the state for the purpose of receiving general assistance, the service officer may find that applicant or recipient ineligible. 33 V.S.A. § 2107.
- The town service officer may provide relief to an individual who may be homeless or who is transient, so long as that individual is not found in a home, hospital, or jail. 33 V.S.A. § 2112.
- If a person, including a transient, dies and no one comes forward to make funeral arrangements, whoever is in charge of that person must report the death to the nearest welfare officer or town service officer. 33 V.S.A. § 2111.

**Appointment.** On or before April 15 of each year, the selectboard must appoint a town service officer and notify the commissioner of the Department for Children and Families of the appointment. If no appointment is made, the commissioner may make the appointment for the town. It is not a conflict for a member of the selectboard to serve as town service officer or for an individual to serve in multiple towns. In the absence of a town service officer, a selectboard member may act on his or her behalf. Upon the retirement, removal, dismissal or death of a town service officer, the selectboard may immediately fill the vacancy and must notify the commissioner of the change. 33 V.S.A. § 2102(a).

**Compensation.** After appointment, the commissioner must give the town service officer a certificate of appointment. The state compensates the officer for his or her services in the town. 33 V.S.A. § 2102 (a).

**Statutory Duties.** The duties of the town service officer are to receive applications for assistance, to investigate, make determinations of eligibility for general assistance, grant from funds advanced to him or her for emergency general assistance, and to perform other duties, including investigations under the welfare code as the commissioner may direct. The town service officer must promptly notify the district welfare director of all determinations which he or she makes as to an applicant’s eligibility. 33 V.S.A. §§ 2102 (b), 2104(b).

## CHAPTER 31. TOWN SERVICE OFFICER

**Training/ Assistance.** The town service officer may call the Vermont Department for Children and Families Economic Services Division district office, 800-479-6151, to consult with an economic service staff person.

For more information or technical assistance, contact the VLCT Municipal Assistance Center, 800-649-7915, or the Vermont Department for Children and Families Economic Services Division district office, 800-479-6151.



## CHAPTER 32. TREASURER

### *Roles and Responsibilities*

**The town treasurer plays a vital role in the management of the finances of the town. He or she is responsible for keeping the town's accounts, investing money received by the town (with the approval of the selectboard), keeping a record of the taxes voted, and paying orders drawn on him or her by officials authorized by law to draw orders on town accounts. The treasurer must work with the auditors to settle town accounts prior to the annual meeting, and he or she is often called upon to provide the selectboard with information about town finances. The town may vote to have its treasurer serve as the collector of current taxes. The treasurer may also serve as the collector of delinquent taxes if independently elected to the office.**

- A town treasurer is generally elected at the annual town meeting and serves either a one-year or a three-year term. 17 V.S.A. § 2646(3). The treasurer may appoint one assistant who serves at his or her will. 24 V.S.A. § 1573. If the treasurer fails to appoint an assistant within ten days after a written request from the selectboard, the selectboard may appoint an assistant treasurer who would then be accountable to the selectboard.
- The town treasurer serves as the school treasurer unless the town school district votes otherwise. 16 V.S.A. § 426(a). The school treasurer keeps the accounts, pays orders, and invests money with the approval of the school board. The school board may direct the treasurer as to the manner of keeping the accounts. 16 V.S.A. § 563(8). The financial records must be made available to the board and superintendent upon request. 16 V.S.A. § 426(d).

**Election/Appointment.** A town treasurer is elected annually at town meeting and generally serves a one-year term. 17 V.S.A. § 2646(3). If a town chooses, it may vote to elect its treasurer for a three-year term. If a town has established a three-year term, this term will remain in effect until the town rescinds it by a majority of the legal voters present and voting at an annual meeting duly warned for that purpose. 17 V.S.A. § 2646(3).

The town treasurer serves also as the town school district treasurer, unless a separate town school district treasurer is elected. 16 V.S.A. § 426.

If the office of treasurer is vacated, the selectboard must post notice of the vacancy in two public places, and in and near the clerk's office within 10 days of the vacancy. The selectboard may act right away to appoint a successor to fill the position until the next annual election. Alternatively, the selectboard, on its own or upon application of five percent of the voters, may call a special meeting to fill the vacancy. 17 V.S.A. § 2643(a); 24 V.S.A. §§ 961-963. The successor is entitled to receive all of the records, files, books, and papers pertaining to the office from his or her predecessor. A small fine (\$10.00 a week) may be assessed against a former official who fails to respond to a request for papers within ten days after the request has been made. 24 V.S.A. § 991.

**Incompatible Offices.** A treasurer may not be an auditor, selectperson, cemetery commissioner or school director for the town. Neither the treasurer's spouse nor anyone assisting the treasurer in his or her official duties may be the town auditor. 17 V.S.A. § 2647. However, the above restrictions do not apply to towns that have fewer than 25 legal voters. 17 V.S.A. § 2648.

**Posting Bond.** Before the treasurer may perform his or her duties, he or she is required to post a bond conditioned on the faithful performance of those duties. If the treasurer is also the school treasurer, he or she must also provide a bond to the school district. The amount of the bond is to be established by the selectboard. 24 V.S.A. § 832. The municipality pays for the bond required by the selectboard. 24 V.S.A.

## CHAPTER 32. TREASURER

§ 835. The selectboard may require the treasurer to post additional surety if it later decides that the posted bond provides insufficient protection to the town or school district. If the treasurer fails to provide the required bond by the end of ten days, the office will be considered vacant and the selectboard may proceed to fill the vacancy. 24 V.S.A. § 832; 32 V.S.A. § 4643. Note that a bond furnished to the municipality is not valid if signed by any other officer of the same municipality as surety.

**Compensation.** Ordinarily, the town votes to compensate the treasurer with a salary of a specific amount. 24 V.S.A. § 932. If the voters fail to set a salary, the selectboard may set the treasurer's compensation. 24 V.S.A. § 933. If the treasurer is also the collector of current taxes, he or she is entitled to be paid the collection fee of one percent of all taxes paid, computed on actual cash receipts after deduction of discounts, unless the town by vote fixes his or her compensation otherwise. 32 V.S.A. § 1672.

**Liability.** If a town or school treasurer is sued in the course of the performance of his or her duties, the action must be brought in the name of the town or school district in which he or she serves. 24 V.S.A. § 901(a). In addition, the town or school district must assume all reasonable legal fees incurred by the treasurer if the treasurer was acting in the performance of his or her duties, with no malicious intent. 24 V.S.A. § 901(b).

A treasurer who pays out money in accordance with a vote of the municipality will not be liable for this payment, even if the vote is later deemed invalid. 24 V.S.A. § 903.

- If the treasurer fails to perform or neglects the duties of his or her office, the treasurer may be fined up to \$100. 24 V.S.A. § 902.
- The treasurer may be fined \$200 if he or she does not pay into the treasury all money in his or her possession belonging to the town or town school district at the end of his or her term. 24 V.S.A. § 993. The town or school district may recover the money in a civil action.
- The treasurer will be ineligible for reelection if he or she fails to settle the accounts with the auditors not less than 25 days before town meeting. 24 V.S.A. § 992.

**Assistant Treasurer.** A treasurer may appoint an assistant, whose appointment may be revoked at any time by the treasurer. Such appointment must be recorded in the town clerk's office. The treasurer will be held responsible for the acts or omissions of any assistant appointed by him or her. If the treasurer receives a written request from the selectboard to appoint an assistant and fails to do so within ten days following the request, the selectboard may make the appointment, which the board may revoke at any time. 24 V.S.A. § 1573. An assistant treasurer who is appointed by the selectboard rather than the treasurer must post bond prior to taking office since the treasurer will not be held responsible for this assistant's actions. 24 V.S.A. § 832. The assistant treasurer performs all of the duties of the treasurer in the event that the treasurer is temporarily absent or disabled.

**Keeping the Accounts and Paying Orders.** The treasurer's primary function is to keep the accounts of the town (and school, if applicable) from the moment the money is collected by the town to the moment it is paid out or invested by the town. Of course, if the treasurer has also been elected collector of current taxes, his or her duties begin with collection of the taxes. 24 V.S.A. §§ 1521, 1571.

**Record of Taxes Voted.** Upon delivery of the tax bills to the collector, the selectboard must take a receipt from the collector and deliver it to the town treasurer. 24 V.S.A. § 1522. The treasurer must keep a public record showing the amount of tax money voted for the support of highways, schools, special departments, if any, and for general town purposes. 24 V.S.A. § 1574.

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**Record of Tax Levies.** When the treasurer receives the town tax bill from the selectboard, or when he or she receives the tax collector's tax receipt, the treasurer must apply the proper credit to the town highway and school district departments. The balance of the bill is credited to the general fund and any special funds the town may have. 24 V.S.A. § 1524. Any alterations in the grand list that change the amount of money received by the treasurer must be reflected in a revision of credits to the school district and the town highway department.

**Credit and Debit of General Fund.** After making a record of the tax levied, the treasurer must apply credits or debits to the general fund where they occur as a result of penalties, interest, discounts on taxes paid early, collector's fees, abatements granted, or any other event which will affect the total amount levied or received. 24 V.S.A. §§ 1525, 1526.

**Differences in Certain Towns.** The discussion above about tax levies, credits, and debits applies to towns that do not have either an incorporated village or an incorporated school district. If a town has a village but not an incorporated school district, the treasurer follows the above procedures with respect to tax levies *except* the highway levy, and the voters may vote to adopt the above procedures for the highway levy. If a town has an incorporated school district but not a village, the treasurer follows the above procedures *except* for the school district levy and the voters may vote to adopt the above procedures for the school district levy. If a town has both a village and an incorporated school district, the above discussion of the relation of the treasurer's duties with regard to the general fund, highway account, and school district account applies only if it is adopted by the voters. 24 V.S.A. § 1527.

**Note that collection fees, costs of collection, abatements, and other losses in enforcement of the tax bill may not be deducted from the account of the town school district.** 1934-36 Op. Atty. Gen. 238.

**Accounts and Reports of the Town Finances.** The treasurer must keep a running account of moneys, bonds, notes, and evidences of debt paid to him or her, and moneys paid out for the various town departments. 24 V.S.A. § 1571(a). Moneys received by the treasurer may be invested and reinvested with the approval of the selectboard. 24 V.S.A. § 1571(b). This means that the treasurer and selectboard have joint authority and must come to an agreement regarding the investment of town funds.

The treasurer is required to file quarterly reports with the selectboard regarding actions addressed in subsections (a) and (b) of Section 1571 (listed above). In addition, the treasurer is required "to annually, on or before June 30, complete and provide to the selectboard a copy of the document made available by the Auditor of Accounts pursuant to 32 V.S.A. § 163(11) regarding internal financial controls."

- The treasurer must also keep a running account with the tax collector of each annual tax bill by endorsing the collector's payments on the account and on the collector's receipt. These endorsements must also note the amount of any abatement allowed by the board of abatement. Each endorsement must be signed and dated. 24 V.S.A. §§ 1579, 1580.

**Paying Orders.** The treasurer must also pay orders drawn on his or her office by town officers authorized by law to draw these orders. If the treasurer refuses to pay these orders, the individual presenting them may recover the amount, plus interest, from the town. The treasurer must keep a book in which he or she records all the orders that are not paid. Of course, if there is not enough money to cover these charges, the treasurer must make this known to the selectboard and to the officer who drew the order. 24 V.S.A. § 1576.

When a town has outstanding interest-bearing orders due, the treasurer may give notice that these orders will be paid on presentation at his or her office on or before a day certain, and after that day such orders will cease to draw interest. 24 V.S.A. § 1582.

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**Settling Accounts with the Auditors.** At least 25 days before town meeting, all officials and any other persons authorized to receive or disburse town tax money must close their accounts with the auditor. This includes settlement of the treasurer's account as treasurer of the town school district. If the treasurer refuses to make this accounting, he or she will be ineligible for reelection. 24 V.S.A. § 992.

During his or her term, the treasurer must also settle accounts with the auditors whenever directed to do so by the selectboard, and when he or she retires from office. At the close of the treasurer's term of office, he or she must pay over to the new treasurer all funds in his or her hands that belong to the town and deliver all official books and papers in his or her possession. 24 V.S.A. § 1578.

**When Taxes are Collected by the Treasurer.** When the town votes to have its treasurer serve as the collector of current taxes, the proper officers (generally the selectboard) must make and deliver all tax bills to the treasurer. 32 V.S.A. § 4791. At least 30 days before the tax due date that was established by the voters, the treasurer must mail the tax notices to the taxpayers. The notice must state the amount of his or her grand list, the tax rate, when the taxes are payable, and must notify the taxpayer about any prepayment discount that is available. If the town did not vote a specific date for the payment of taxes, or if the treasurer does not mail the notice at least 30 days before the due date, the due date becomes 30 days from the date of mailing of the notice to the taxpayers. 32 V.S.A. § 4792.

The treasurer must keep separate accounts of all money received as highway or school taxes, and must pay out the same upon orders of the proper officers. 32 V.S.A. § 4791.

**Delinquent Taxes.** Within 15 days after the tax due date (or within such earlier time as the voters may establish), the treasurer must issue a warrant against delinquent taxpayers for the amount of unpaid taxes. 32 V.S.A. § 4793. Within that same period of time, the treasurer must deliver a list of unpaid taxes, with the name of each delinquent, to the collector of delinquent taxes. 32 V.S.A. § 4874.

The treasurer must accept full payment of overdue taxes after the due date but before the warrant is issued, so long as the payment includes the collection fee and accrued interest. This is done for the benefit of the collector of delinquent taxes. The treasurer must turn over these taxes, fees, and interest to the collector of delinquent taxes when the warrant is issued. 32 V.S.A. § 5142(b).

If the treasurer believes that a taxpayer is about to abscond from the state without paying taxes, before the 30-days notice period for paying taxes has expired, the treasurer may file an affidavit so stating with the selectboard. The treasurer may then issue a warrant against the taxpayer to the collector of delinquent taxes. 32 V.S.A. § 4796.

After the treasurer delivers the warrant and list of delinquent taxpayers to the collector of delinquent taxes, the responsibility for collection rests on the collector of delinquent taxes. The only remaining duties of the treasurer are to receive and account for any money paid to him or her by the collector. *Town of Brookfield v. Bigelow*, 80 Vt. 428 (1908).

**Delinquent Sewer Assessments.** When an assessment regarding water mains and sewers remains unpaid for 30 days, the treasurer must issue a warrant for its collection to the tax collector to enforce in the same way as for collection of delinquent taxes. 24 V.S.A. § 3408.

**Cemetery Trust Funds.** A town may vote to receive and hold money in trust for town cemetery purposes. 18 V.S.A. § 5383. When this occurs, the treasurer must keep account of the cemetery trust funds, unless trustees of public funds have been elected to do so. Either the selectboard or the board of cemetery commissioners (whichever the town has voted) expends the income from such funds under the

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conditions of the trust. The town may be fined an amount not to exceed \$100 if the board neglects to expend income pursuant to the trust conditions. 18 V.S.A. § 5385.

All moneys received by the town may be invested and reinvested by the treasurer with the approval of the selectboard, or by trustees of public funds if the town has elected them, in a variety of ways. 18 V.S.A. § 5384(b). The town treasurer or the trustees of public funds must annually report to the town the condition of such funds. 18 V.S.A. § 5386.

**State and County Taxes.** The treasurer receives the bills for the state and county tax assessments from the selectboard, and, within the time required on the warrant, pays the sum to the state and county treasurers. 24 V.S.A. § 220.

**School Treasurer Duties.** As noted above, the town treasurer serves as school district treasurer unless the voters elect a separate school treasurer. The treasurer must keep in a separate bank account all money appropriated or given for use of the school district. Within 20 days after school taxes are due (or within another time period if agreed upon in writing by the selectboard and school board), the treasurer must deposit the school tax payments in the school account. However, if notification of the amount to be transferred to the school district by the commissioner has not been received within 20 days of the date taxes are due and payable, the transfer shall be effected within 20 days of notification by the commissioner. 16 V.S.A. § 426(a). Within 120 days after taxes become delinquent, but no later than the end of the school year, the treasurer must deposit the balance of the school tax levy in the school account. 16 V.S.A. § 426(b).

Note, however, 32 V.S.A. § 5402(c) says “The treasurer ... shall by December 1 of the year in which the tax is levied and on June 1 of the following year pay to the state treasurer for deposit in the education fund one-half of the municipality’s statewide nonresidential tax and one half of the municipality’s homestead education tax, as determined under subdivision (b)(1) of this section.” This section derives from Act 60, the education funding reform law passed in 1997-98. It means that if your town owes money to the “sharing pool,” it will get a bill from the state commissioner of taxes advising how much money is due to the state treasurer on December 1 and June 1 to meet that obligation.

According to 16 V.S.A. § 426(d), the school treasurer “shall keep the financial records of cash receipts and disbursements, and shall make those records available to the board of school directors or the supervisory union board when requested to do so.” Thus, the treasurer controls the financial records of the school district and must accommodate the need of the board to have access (even daily access, if requested) to such information.

It is the school treasurer’s duty to deposit all checks and pay out money drawn on orders of the board. Additionally, the treasurer may invest and reinvest all sums received by the district so long as such investment decisions are made with the approval of the school board members. 16 V.S.A. § 426(c).

There are two different statutory provisions that affect the regulation and control of school finances. According to 16 V.S.A. § 563(8), the school board is directed to “establish and maintain a system for receipt, deposit, disbursement, accounting, control, and reporting procedures that meets the criteria established by the state board pursuant to 16 V.S.A. § 164(15) and that ensures that all payments are lawful and in accordance with a budget adopted or amended by the school board. The school board may authorize a subcommittee, the superintendent of schools, or a designated employee of the school board to examine claims against the district for school expenses and draw orders for such as shall be allowed by it payable to the party entitled thereto.” Section 563(9) authorizes the school board, with the advice and consent of the auditor of accounts and the commissioner of education, to establish a system of accounts

## CHAPTER 32. TREASURER

for the proper control and reporting of the school finances and for stating the annual financial condition of the school district. 16 V.S.A. § 563(9).

**Due to the above provisions, the relationship between the school board and the treasurer differs significantly from the relationship between the treasurer and the selectboard. The selectboard may not tell the treasurer how to perform his or her statutory duties, but the school board may establish a system of accounting, reporting, and other controls to which the treasurer must conform.**

Accordingly, although the treasurer has ultimate custodial responsibility over the books, check-writing and depositing of checks, these duties must be performed in a manner that is consistent with the accounting procedures, reporting, and other controls as established by the board.

**Relationship of Town Treasurer and Town Auditors.** Situations may arise where the town treasurer and the auditors do not agree on the proper presentation of the financial statements. If, after every effort has been made, no agreement is reached, then the financial statements must be presented in a manner directed by the town treasurer. However, the town auditors must then enumerate their exceptions to such presentation in their report, and, depending upon the significance of those exceptions, must disclaim an opinion, qualify their opinion, or definitively take issue with the presentation.

In any event, it is extremely important that the distinction be maintained between the treasurer's financial statements and auditors' report on those financial statements.

For more information about the role and responsibilities of the treasurer, please consult VLCT's *Handbook for Vermont Municipal Treasurers* (2002). This handbook may be viewed (under "League Resources") or purchased (under "Marketplace") online at [www.vlct.org](http://www.vlct.org).

## CHAPTER 33. TREE WARDEN

### *Roles and Responsibilities*

Vermont law provides for the appointment of a tree warden by each town and city to act as overseer of public trees, organizing and implementing tree planting, and maintenance and protection programs. Today's tree warden need not be an arborist, a horticulturist, or an entomologist. Rather, it is more important that he or she is an organizer and a catalyst – one who can get things done.

The selectboard must appoint a tree warden who must be a resident of the town. 24 V.S.A. § 871. He or she has the responsibility of caring for the shade and ornamental trees in public ways and places. The tree warden may also appoint and dismiss deputies. 24 V.S.A. §§ 2502-2511.

The tree warden enforces all laws relating to public shade and ornamental trees. These regulations become effective when adopted as local ordinances under authority of 24 V.S.A. § 2506 and 24 V.S.A. Chapter 59.

There are penalties for the destruction of public shade trees and anyone who, willfully, critically injures or cuts down such a tree may be fined up to \$500 for each tree so damaged. 24 V.S.A. § 2510.

There are three major areas of a tree warden's responsibilities:

- to remove trees that cannot be saved;
- to salvage those that can be saved; and
- to implement a tree preservation program for the town.

The removal of diseased trees is a major part of the tree warden's responsibility to the town. 24 V.S.A. § 2502. The slow but inexorable destruction of New England's majestic elms by Dutch Elm Disease is an example of the significance of a program to remove dead and dying trees, as it is only through removal and burning of the wood that this disease can be eradicated.

When widespread disease threatens shade or ornamental trees, whether publicly or privately owned, the tree warden will call upon the expertise of the Vermont Agency of Agriculture, Food and Markets and put into practice such control measures as it may advocate. These measures can extend to any trees, shrubs, or plants that harbor insect pests or disease, and may, at the recommendation of the secretary of the Agency, extend to private and/or public land. The tree warden may enter into negotiations with private landowners concerning disease control measures to be used upon the trees on their lands, but he or she has the right to use those measures with or without the owner's permission where necessary. 24 V.S.A. § 2511.

Other trees, not necessarily diseased, may still pose a hazard. Old or damaged trees threaten homes, utility lines, and the public. It is not always necessary to totally remove such trees; sometimes rigorous pruning will allow a tree to continue to exist after top-heavy limbs or dangling branches have been removed.

Though removal of a tree may often appear to be the only remedy to save other trees in the area, whether on public or private land, people who live in that area may take exception to the tree warden's exercise of his or her authority. Thus, a public shade tree in a residential area may not be removed without a public hearing, except where the tree warden finds it to be infested, infected, or a hazard to public safety. Practically and politically speaking, a tree warden should hold a public hearing before removing any tree whose disappearance might prove controversial. The warden's decision to remove a tree is final unless he or she, or another interested party, requests that the selectboard make the final decision. 24 V.S.A. § 2509.

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The warden's work is not all negative, however. The warden's duties include beautifying the town with new plantings, while preserving shade and ornamental trees already growing there, and involving the community in a planting and preservation program. 24 V.S.A. §§ 2502, 2507. To this end, the warden may solicit help from local, state, and federal agencies, public and private foundations and individuals, and acquire from any of them money, equipment, supplies, or services. 24 V.S.A. § 2507.

For more information about tree care and management, please contact the Urban and Community Forestry Program within the Vermont Division of Forestry at [http://www.vtfpr.org/urban/for\\_urbcomm.cfm](http://www.vtfpr.org/urban/for_urbcomm.cfm) or call 802-828-1531.



## CHAPTER 34. TRUSTEE OF PUBLIC FUNDS

### *Roles and Responsibilities*

Trustees of public funds shall be elected from among the legal voters at the annual meeting if the town so directs. 17 V.S.A. § 2646(12); 24 V.S.A. § 2431. The terms of the trustees will be for three years each. When the trustees are first elected, one will serve for one year, one for two years, and one for three years so as to stagger the terms of office. 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 excludes “United States public money,” for which a separate trustee of public money must be elected. (This requirement only applies to towns that “retain possession of a portion of the surplus funds of the United States received under the Act of 1836.”) 17 V.S.A. § 2646(13). Practically speaking, it is questionable whether any town still has any of this federal surplus “public money” and, thus, requires a trustee of public money.)

Twenty-four V.S.A. § 2431 specifically grants the trustees of public funds responsibility for cemetery trust funds, unless the donor directs otherwise. This creates some overlap of responsibility for cemetery funds among trustees, cemetery commissioners, and town treasurers. 18 V.S.A. Chapter 121, subchapter 2. It appears that if trustees of public funds are elected, they are primarily responsible for the investment of the cemetery funds and for the annual reporting on them. How this is practically worked out amongst the cemetery trustees, treasurer, and trustees of public funds is probably the result of each town’s unique arrangements.

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 securities, bonds and shares.
- 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.

Each year, the trustees shall report to the town or, in the case of school money, to the state Board of Education, the amount of funds in their hands, 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, and in some investments they are subject to certain federal and state banking and insurance guidelines. Finally, they may prosecute and defend in legal actions involving public funds. 24 V.S.A. § 2433.

## CHAPTER 35. WATER COMMISSIONER

### *Roles and Responsibilities*

**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 elects its water commissioners, they must be elected by ballot. If the town does not vote to have such a board, the selectboard must appoint three commissioners to supervise the water system. 17 V.S.A. §§ 2646(17), 2651(b). Members must be legal voters of the municipality. The terms of the commissioners, whether elected or appointed, will be for three years each, with the first water commissioners serving a one-year, a two-years, and a three-year term so as to stagger the terms of office. 17 V.S.A. § 2649. One or two additional water commissioners may be authorized for one-year or two-year terms. 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 for “just cause” after notice and hearing. 17 V.S.A. § 2651(b).**

**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.
- Appoint a superintendent who may also be removed by them. Appointment and removal are “at the pleasure” of the commissioners, so a hearing need not be held nor reason given in the event of the removal of the superintendent, unless the municipality’s personnel policy or the union contract provides otherwise. 24 V.S.A. § 3313(a) and 24 V.S.A. §1121.

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, and for payment into a dedicated water fund. 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 to show the issue of the bonds, the amounts and dates of the same, when they are due, and the payment date of each. 24 V.S.A. § 3314.

Towns have the power to make, alter, amend, or repeal ordinances, bylaws, and regulations pertaining to the municipal water system, as long as they are consistent with Vermont law. The town also has the right to require existing customers to remain connected to such system and to impose and enforce penalties on those water customers who disregard these regulations. 24 V.S.A. § 3315.

## CHAPTER 36. WEIGHER OF COAL

### *Roles and Responsibilities*

**The weigher of coal may be appointed by the selectboard (24 V.S.A. § 871 (4)) to serve as a referee in determining the weights of contested loads of coal (24 V.S.A. § 1032). For this service, he or she is entitled to a fee of ten cents for the first ton and four cents for each additional ton, to be paid by the person who requests to have the coal weighed. 32 V.S.A. § 1677.**

As a practical matter, to have an official weigher of coal, a municipality should first have a municipal scale. In fact, *no* town in the state now has a municipal scale in use.

If the use of coal should once again become widespread, towns might have municipal scales, which they would either own outright or lease. If a town has access to a scale, certain precautions should be followed. The scale must be securely locked when not in use; it should be used only by or with the consent of the municipal officials who are responsible for it; and it must be regularly inspected by an agent from the Consumer Assurance Section of the Vermont Agency of Agriculture, Food and Markets.

Since no town has a municipal scale, a weigher of coal who receives a complaint would refer the complaint to the Consumer Protection Section of the Vermont Agency of Agriculture, Food and Markets, 802-828-2436.

## CHAPTER 37. ZONING ADMINISTRATIVE OFFICER

### *Roles and Responsibilities*

The municipal administrative officer, more commonly known as the “zoning administrator,” is more than just the ordinance enforcement agent. He or she is the face of a town’s zoning program. The administrative officer assists applicants through the sometimes confusing review process and is the first public official contacted when development is proposed or an individual has a complaint. As a result, he or she plays an important role as the town’s public relations person, as well as at times the “complaint department.” Administrative officers are statutorily obligated to literally interpret their towns zoning bylaws. This “literal interpretation” however often requires the administrative officer to have an appreciation of context and precedent and administrative officers must exercise good judgment in their interpretation of zoning bylaws. Where issues arise in applying the bylaws, he or she is in an ideal position to educate other zoning officials and the selectboard about possible amendments and possible consequences of land use policy decisions.

- The administrative officer is appointed for a three-year term by the selectboard upon nomination by the planning commission. He or she is subject to the town’s personnel policies and may be removed from office for cause at any time by the selectboard after consultation with the planning commission. 24 V.S.A. § 4448(a).
- The planning commission may nominate and the legislative body may appoint an “acting administrative officer” who will perform the same duties and responsibilities as the administrative officer during the administrative officer’s absence. 24 V.S.A. § 4448(b).
- The compensation of the administrative officer may be fixed annually by the voters or, in their absence, by the selectboard. 24 V.S.A. §§ 932, 933.
- The administrative officer must act on a complete application within 30 days, either by approving or denying an application or referring it to the appropriate municipal panel. Failure to act will result in an automatic “deemed” approval of the permit on the 31<sup>st</sup> day after receipt of a complete application. 24 V.S.A. § 4448(d).
- The administrative officer must administer the municipal bylaws literally. He or she does not have the power to permit any land development that is not in conformance with such bylaws. 24 V.S.A. § 4448(a).
- Enforcement of the land use ordinance is solely the responsibility of the administrative officer. 24 V.S.A. § 4452
- All permits issued by the administrative officer must contain a statement of an individual’s right to appeal the action to the appropriate municipal panel. 24 V.S.A. § 4449(b).
- When the selectboard provides public notice of the first public hearing on a bylaw or amendment, the administrative officer, for a period of 150 days following that notice, must review any new application under the proposed bylaw or amendment and applicable existing bylaws. If the proposed bylaw or amendment is not adopted within the 150-day period or is rejected, the application will be reviewed under the existing bylaws. If the application is denied under a proposed bylaw or amendment that has not been adopted, the application must be reviewed again for free under the existing bylaw if requested by the applicant. 24 V.S.A. § 4449(d).

### **The Zoning Process**

**Authority.** The administrative officer is charged with administering and enforcing zoning bylaws that are developed and adopted in accordance with Chapter 117 of Title 24 (24 V.S.A. §§ 4301 et seq.) Every administrative officer should be familiar with these statutory requirements and have a thorough working

## CHAPTER 37. ZONING ADMINISTRATIVE OFFICER

knowledge of the local land use regulations and to a certain degree, state statutes and regulations. They should also have an understanding of the communities' geography, settlement patterns, appropriate municipal panels and the towns' municipal plan.

As a practical matter, the administrative officer also often serves as the "public information officer" for general land use regulations. The administrative officer should provide property owners and members of the public with the necessary forms to obtain any municipal permit or authorization required under local bylaws and ordinances regulating land development. They should inform any person applying for municipal permits or authorizations that he or she should also contact the regional permit specialist employed by the state Agency of Natural Resources in order to assure timely action on any related state permits. The administrative officer is further encouraged to coordinate a unified effort on behalf of the town in administering its development review programs. 24 V.S.A. § 4448(c).

**Obtaining a Permit.** A zoning permit must be obtained from and approved by the administrative officer prior to any land development in a municipality with zoning bylaws, unless the particular development activity is exempted under state statute or the local zoning bylaws. 24 V.S.A. § 4449(a). When an application for a municipal land use permit seeks approval of a structure, the administrative officer must provide the applicant with a copy of the applicable residential or commercial building energy standards as provided under 30 V.S.A. §§51 and §53. However, the administrative officer need not provide a copy of the standards if the structure is a sign or a fence or the application certifies that the structure will not be heated or cooled. A certificate of occupancy must also be issued prior to use or occupancy of any land or structure if the local bylaws so require. 24 V.S.A. §4449(a)(2).

Each zoning permit issued must contain a statement of the period of time within which an appeal may be taken (15 days from date of the decision, action, or non-action). 24 V.S.A. § 4465(a). Within three days of issuance of the permit, the administrative officer must:

1. deliver a copy of the permit to the listers; and
2. post a copy of the permit in at least one public place in the town until the expiration of 15 days from date of issuance of the permit. 24 V.S.A. § 4449(b).

Further, all municipal land use permits – as that term is defined in 24 V.S.A. § 4303(11) (or a memorandum of such permit), including all notices of violations – must be delivered by the appropriate municipal official to the town clerk for recording in the land records. The permit or a memorandum of permit must be recorded within 30 days of the issuance of the permit or notice of violation. 24 V.S.A. § 4449(c).

**Appeals.** An interested person – as that term is defined in 24 V.S.A. § 4465(b) – can appeal the administrative officer's decision by filing a notice of appeal with the secretary of the zoning board of adjustment or development review board or with the clerk of the municipality if no secretary exists. The notice of appeal must be filed within 15 days of the decision, action, or non-action of the administrative officer. 24 V.S.A. § 4465(a). Only interested persons who have participated in a municipal regulatory proceeding may appeal an appropriate municipal panel's (AMP) decision to the Environmental Court. The appeal notice must be filed by certified mail with fees to the Environmental Court and by mailing a copy to the town clerk or the administrative officer. The town clerk or administrative officer, if so designated, must supply a list of interested persons to the appellant within five working days. 24 V.S.A. § 4471 (c).

**Enforcement.** It is solely the administrative officer's responsibility to bring enforcement action against any property owner who violates any provisions in the land use regulations. Though the administrative officer must enforce against a known violation, the remedy sought is discretionary. No enforcement action may be taken until the administrative officer has provided a written warning to anyone suspected of

## CHAPTER 37. ZONING ADMINISTRATIVE OFFICER

an alleged violation of a bylaw. The notice must be sent by certified mail and must advise the alleged offender:

- of the nature of the violation (referencing the specific provisions of the bylaws is helpful);
- that he or she has seven days in which to “cure” the violation (be specific about what steps need to be taken to abate the violation);
- that he or she is not entitled to any additional warning notice for a violation occurring after the seven days; and
- that he or she has a right to appeal the notice of violation to the zoning board of adjustment (or development review board). 24 V.S.A. § 4451 (a).

As enforcement officer of the municipal zoning laws, the administrative officer is empowered to initiate appropriate legal action in the name of the town against those who violate its bylaws. Such authority includes submitting an application for a mandatory injunction to the superior court for the county in which the violation is occurring or will occur, or initiating an action in Environmental Court or the judicial bureau as appropriate. 24 V.S.A. § 4452. It will be necessary for the administrative officer to consult with the selectboard and the town attorney prior to initiating any legal action.

For more information about the role and responsibilities of the Zoning Administrative Officer, please consult the *Zoning Administrator's Handbook* (2005) by the Vermont Land Use Education and Training Collaborative available from the online Vermont Planning Information Center located at [www.vpic.info](http://www.vpic.info).





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