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# Vermont League of Cities and Towns

## Local Regulatory Processes Related to Housing & Development

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# Today's Testimony:

- Universal municipal authorities related to land use regulation
- Local planning, regulatory, and enforcement processes
- Fee setting
- Let's talk about form-based code
- Considerations and ideas for legislative action



# Regulation of Construction and Building in Vermont

While all towns have broad regulatory authority for land use under state law, not all towns have local regulatory systems, and the standard of regulation and enforcement varies significantly community by community.

- 247 Municipalities, including 10 Cities
- 200 Municipalities with a Municipal Plan
- 142 “10 Acre Towns” with Adopted Zoning and Subdivision Bylaw
- 89 Chartered Cities, Towns and Villages
- 43 Municipalities operate water and sewer



# Municipalities Have Regulatory Authority for Land Use

Because Vermont is a Dillon's Rule state, municipalities have only those powers and functions specifically authorized by the Vermont Legislature. Many state pre-emptions for zoning exist.

1. Zoning: A municipality may regulate land development in conformance with its adopted municipal plan and to govern the use of land and the placement, spacing, and size of structures and other factors specified in bylaws related to public health, safety, or welfare. Zoning bylaws may permit, prohibit, restrict, regulate, and determine land development for a broad range of purposes enumerated in state law.
2. Ordinance: An ordinance is a legislative act by the legislative body of a municipality. Once adopted according to statutory process, they become legally enforceable local laws.
3. Policy: Generally, policies apply to employees, town facilities or the public body itself. Policies do not have regulatory enforcement authority.
4. Charter: Municipalities may receive additional regulatory authorities through a charter amendment process. Example: Burlington Thermal Energy for Buildings



**Why does that matter?**

**Because components of local regulation may exist in bylaw, ordinance, charter, or policy - with different amendment processes and enforcement authority.**



While municipalities enjoy broad regulatory authority, state law requires robust, citizen led, democratic and transparent public processes for the creation, adoption, amendment, and enforcement of local regulation.



# Writing the Rules

Zoning Bylaws may be created to enforce the municipal plan within the authorities prescribed by state law.

- The Municipal Plan: is developed through a citizen led process (usually starts with a citizen commission) and is adopted by the legislative body, shared with statutory parties, and then must be approved by the RPC and DHCD. Each action of a local body and subsequent amendments require a public hearing. The Plan must contain 12 elements required by state law.
- Zoning and Bylaw: Many state preemptions exist to limit bylaw authority. Some charters require additional process. For substantial zoning changes additional outreach, long drafting and periods of deliberation, research, feasibility study, assessing infrastructure capacity, joint hearings, etc. are typical
- At a minimum, to adopt or amend a bylaw the appropriate municipal panel must:
  - Publish a public report, consistent with municipal plan
  - Hold a public hearing
  - 15-day notice period and statutory notices (RPC, DHCD, etc.)



# Considerations for Local Enforcement Systems

Regulatory authority is not the same as local capacity!

1. Does the town have a municipal plan?
2. Considering the municipal plan and opportunity for growth, is zoning bylaw appropriate or necessary?
3. Given the standard of local bylaw, are ordinances necessary or appropriate to allow for the local enforcement of land use regulations?
4. Does the town have the administrative capacity for enforcement of local ordinance? (permit, inspection, penalty, review, appeal, permit defense etc.)



# Fee Setting for Municipal Permits and Inspections

Municipalities may establish fees to exercise an expressly authorized power as an incidental and necessary function for its administration and enforcement.

- Fees are created by ordinance, and municipalities may use a fee schedule to allow for incremental increases without requiring bylaw or ordinance amendment
- Fees may not be used as purely income
- Fees may be punitive
- Generally, for building fees are assessed against estimated construction cost or square footage such as \$20 per \$1,000 in cost or .50 per square foot
- For filing, fees are generally per page or a flat for digital filing



## Let's Talk about Form-based Code!

A higher standard of municipal regulation can productively eliminate or diminish the volume of appeals for housing.

- Several Vermont municipalities have adopted form-based code for some zoning districts (Jericho, Winooski, Burlington, South Burlington, and Newport)
- Developing form-based code can be a long and arduous process
- Form-based code could be criticized for being overly prescriptive; not giving homeowners, architects or builders enough choice
- The process expands the opportunity for community input into how things are built on the front-end, and limits the ability of citizen or municipal panels to make changes or choices on the back-end

## Form-based code timeline to adopt - City of Burlington

- The development of a plan for the downtown and waterfront had been a long-standing action item in the Development Plan since at least 1996.
- 2010: The City Planning Department receives HUD Planning Grant
- 2011-2012: series of studies to inventory and assess existing conditions
- 2013: completed a comprehensive downtown and waterfront master plan, One of the most important implementation tools identified in planBTV was the development of a form-based code for the Downtown and Waterfront area.
- 2014: Mayor released the Downtown Housing Strategy Report including 5 strategies to increase the rate of market-rate housing development which included “Form Based Code zoning reform”.
- 2014 - 2016: A joint committee of the council & planning commission conducted **more than 30 public meetings** on the draft form-based code
- 2017: Downtown Code was adopted in November 2017, and most recently amended in 2024

# Supporting Improved Local Regulations for Housing

1. Streamline local adoption of state pre-emptions and model codes
2. Eliminate duplicative state/local regulatory processes (Act 181 and municipal delegation)
3. Strengthen existing technical assistance programs (Municipal Planning Grants and MTAP)
4. “De-risk” entrepreneurial municipal development projects for local voters (RLFs)
5. Expand municipal revenue authorities to build local resources, existing examples:
  - TIF
  - CHIP
  - Local Option Taxes
  - Special Assessment Districts & Impact Fees



# Statutory Standards for Tier1a Status

1. A municipal plan (200 adopted)
2. Boundaries are consistent with FLUs (RPC/LURB approval & adoption)
3. Have adopted permanent zoning & bylaw (142 adopted)
4. Adopted flood hazard and river corridor bylaws consistent with or stronger than statute
5. Have permanent land development regulations that further smart growth principles
6. Area must be compatible with the character of adjacent National Register Historic Districts, National or State Register Historic Sites, and other significant cultural and natural resources
7. Identified and planned for the maintenance of significant natural communities, rare, threatened, and endangered species
8. Public water and wastewater systems have the capacity to support development (43 municipalities operate water & sewer)
9. Demonstrate staff adequate to support capital planning, development review, and zoning administration.

[10 V.S.A. § 6034](#)

# How does a municipality create an Act 250 exempt area?

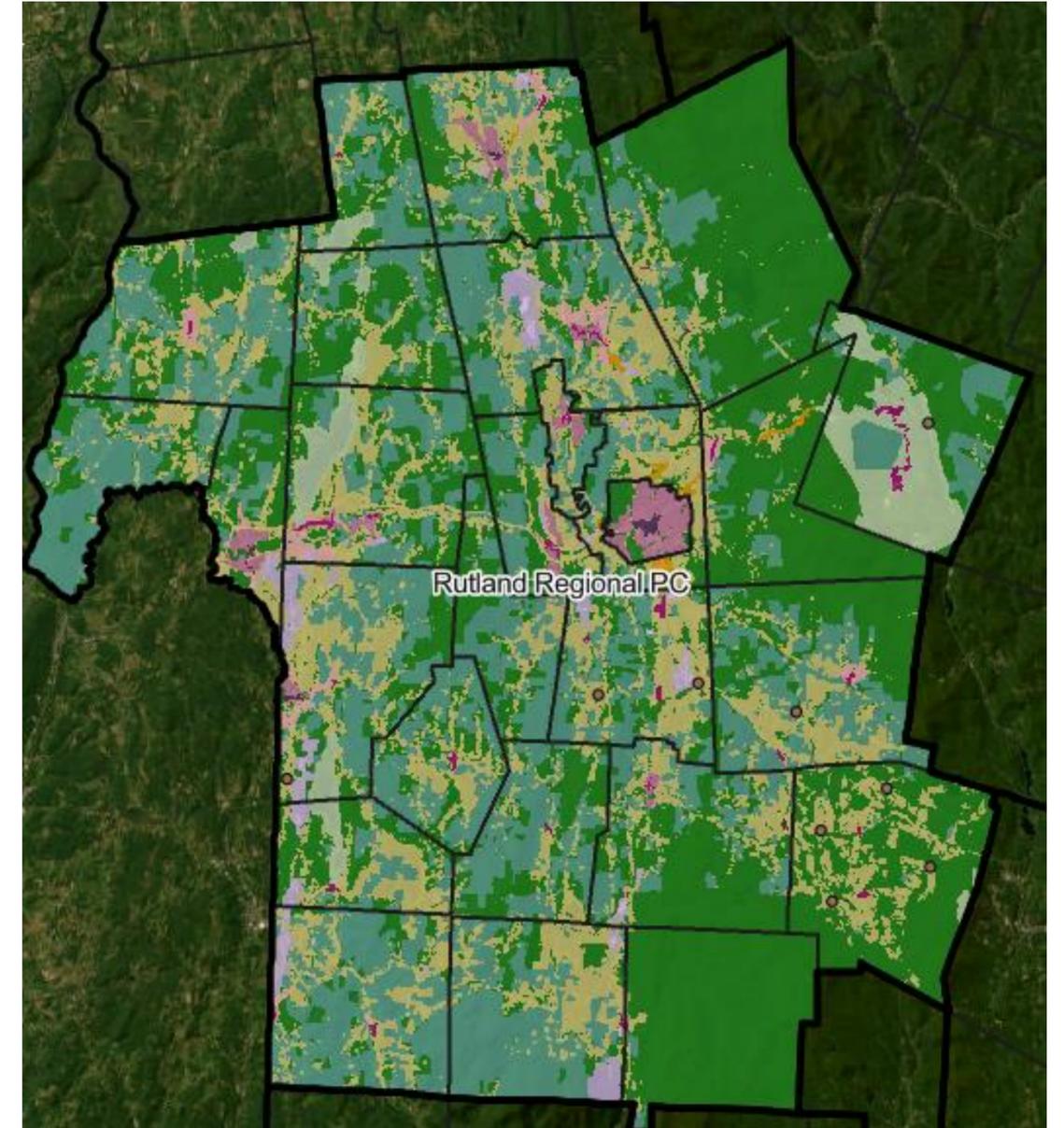
The creation of a Tier 1a is not a municipal authority. A municipality must navigate months or years of local, regional, and state processes that accommodate broad public input and numerous actions of the municipal legislative body.

1. Tier 1a & Tier 1b eligible areas (FLUs) are determined by adopted and approved regional plans
  - RPC's draft maps according statutory requirements and shared methodology
  - RPC's conduct local engagement and receive municipal input
  - RPC's submit regional plans to LURB
2. Land Use Review Board (LURB) reviews and approves Regional Maps
  - 60-day pre-application period with statutory notice requirements (includes AAFM)
  - Pre-application may include request for Tier1b status, RPC must submit a resolution from each municipality's legislative body
  - Public hearing
  - LURB decision within 15 days of hearing
3. RPC holds public hearing and adopts the regional plan
4. LURB holds public hearing and affirms or denies the regional plan

# How does a municipality create an Act 250 exempt area?

(continued)

5. Municipal process to authorize Tier 1a application
6. Following the affirmative decision by the LURB and adoption of the regional plan, a municipality may apply to the LURB for Tier1a
7. Pre-application period
  - Statutory and additional notice requirements (includes AAFM)
  - Public comment period
  - Review by a member of the board for compliance with statutory requirements
8. LURB holds public hearing
9. LURB deliberates and affirms or denies the Tier 1a area
10. If affirmed, LURB performs a check-in every 4 years and a review of status every 8 years. Additional Tier 1a areas require re-application



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# Questions???



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# Links and Resources

- [Municipal Charters](#)
- [Title 24 Chapter 117: Municipal Planning and Development](#)
- [Municipal Plans and Bylaws Database](#)
- [TROC Town Plan Adoption and Manual](#)
- [Essentials of Local Land Use Planning and Regulation Handbook](#)
- [10 Acre Towns List](#)
- [10 Acre Town Check List](#) (required zoning bylaws)
- Sample Fee Schedule - [South Burlington](#) and [Rutland](#)



# Links and Resources, Act 181

- [Future land use map viewer](#)
- [Tier 1a guidelines](#)
- [Tier 3 draft rule 2.1](#)
- [Tier 3 map viewer](#)
- [VLCT webinar, Road Rule & Tier 3 \(recorded\)](#)

