

LIST OF AGENDA AMENDMENTS AND HANDOUTS
VILLAGE OF ESSEX JUNCTION TRUSTEES
SPECIAL MEETING AGENDA
JUNE 17, 2020

AGENDA ADDITIONS/CHANGES

- 6d. Consider Champlain Valley Expo request to waive annual fee

ADDITIONAL HANDOUTS

- 6c. Charter comments from Trustees
- 6c. Draft Charter of Merged Municipality
- 6c. VLCT CCRPC Study
- 6d. Email from Tim Shea re: CVE annual fee

TRUSTEE COMMENTS ON DRAFT MERGER CHARTER

6/17/20

Andrew Brown

102, 111 – I assume the blank end year will be filled in as a final draft is ready

104 – I can live with these transitional districts but does this language allow for other parts of the Town to become a part of one or more district? Example – the sidewalk district and the desire for better maintained sidewalks especially with a lack of school buses?

105 – How will the interim governing body function with ongoing elections? Will those who are elected to a multi-year seat simply no longer have a board to be on once the interim body is no longer needed? Is this what 114 is for?

107 – Is this necessary given later parts of the Charter which discuss budget specifics?

102 seems to set a definition for “transition period” though 108 specifies a 5 year transitional period, 112 does specify the length of a transitional phase for water and sewer systems,

115 “Transitional Tax Districts...” – is this necessary since it essentially refers to 104?

115 “Repeals” – This is the second 115

205 (b) – Is this necessary with subchapter 3?

301 (b) – How do other VT communities handle reapportionment? I don’t believe this is something the SB should be empowered with but rather an independent commission which can be created similar to the PC or DRB. This is something where we need to take politics out.

501 (c) - Do we need to specify the hours or even the number of hours? We changed them in the Village due to the pandemic and specifying them in the Charter would have prevented us from being able to change the hours

605 – this seems out of place, why is it in the Charter?

Subchapter 9 – this isn’t within either the Town or Village Charter now, why do we need any of these to be specified within the Charter? We don’t say that there needs to be a police department, public works, library, etc. so why are these so important that they need to be within the Charter

1003 – I would change to read, “...and shall fix the time and place for holding not less than one public hearing for the budget...”

1005(b) – What is meant by “Selectboard budget”, is this the approved of budget by the voters, is this the Selectboard “department” within the budget? Is there a need to specify the capability is within only the general fund or is this also for the enterprise fund(s)? Would this allow for a board and/or manager to take funds from a general fund and put them into the enterprise fund(s) and vice/versa?

1102 – This seems like it is better suited for a policy and not something within a charter

Some VT communities have a recall provision. I would be in favor of such a provision as three years can seem like an eternity and should an elected official do some egregious there should be some of recall provision. The following are some examples from other communities though there are many more.

Bennington, <https://legislature.vermont.gov/statutes/section/24APPENDIX/103/00104>

Brattleboro - <https://legislature.vermont.gov/statutes/section/24APPENDIX/107/00003.05>

Colchester - <https://legislature.vermont.gov/statutes/section/24APPENDIX/113/00203>

Middlebury - <https://legislature.vermont.gov/statutes/section/24APPENDIX/127/00307>

Hardwick - <https://legislature.vermont.gov/statutes/section/24APPENDIX/123/00311>

Milton - <https://legislature.vermont.gov/statutes/section/24APPENDIX/129/00202>

Poultney - <https://legislature.vermont.gov/statutes/section/24APPENDIX/133/00103>

Springfield - <https://legislature.vermont.gov/statutes/section/24APPENDIX/149/00023>

Raj Chawla

Overall concerns:

Maintaining adequate level of service for village residents

Tax relief for village residents

Preservation of the village downtown as THE downtown for the Town of Essex.

Add language to the charter that enables the Town of Essex to regulate tobacco and perhaps alcohol (see the end and attached VLCT – CCRPC study).

Creation of a citizens advisory committee for policing (St. Albans, Brattleboro, Burlington etc.) that would, among other things, participate in the selection of the police chief

Comments and Questions:

102 Transition period. I'd like to figure out if we can delay combining the budgets further into the transition period, perhaps with economic triggers (Could the trigger be the passage of a LOT?)

While I am concerned about asking members of the TOV to increase their taxes during this time, I am equally concerned about asking village taxpayers to put off tax relief in this difficult time. Is this even possible? I'm assuming it would mean having a new SB for the new Town of Essex but retaining two separate budgets. What if we kept the transitional combined board until those triggers were met, each proposing budgets to their districts while simultaneously creating a plan to bring departments / policies / ordinances together etc. In this case, Section 102 would read, "The transitional period shall begin not later than July 1, following the approval of the charter by the Legislature, and end on June 30, following the (end of declared recession or unemployment returning to July 1, 2019 levels, or the passage of the LOT etc.) Of course the trouble is, what if we don't get there?"

"At the end of the transition period, the charter shall become effective and the new Town of Essex shall be fully established and organized."

104 d. Strike. No capital improvement district. Capital budgets become aligned and re-ranked ASAP. Based on comments by the selectboard chair at our last joint meeting, should we put this merger vote off, we could be looking into some sort of combining of the capital budgets. We should move ahead with that effort. If that is possible while we pause on merger, it is possible if we continue with merger.

104 e. Widen the \$0.01 levy to businesses in the entire Town of Essex as the *Village is the Town's downtown district*, not just a legacy district that needs temporary revitalization. The Village is now and will continue to be the "downtown" for the town and the entire town should be concerned about the health and vibrancy of the district. This would be / could be for the 12-year transitional period, or a minimum of 12 years and sunset, or perhaps the five-year transition period, and extended as needed.

"The new Town of Essex shall levy a special tax on commercial properties within the town at a rate up to but not to exceed an additional \$0.01 on the community-wide tax rate in each fiscal year to pay for infrastructure, and the real estate purchases within the District in accordance with the revitalization objectives in the municipal plan."

105a: Strike "...with a preference for retaining selectpersons who reside outside of the village" and replace with, "with a preference for maintaining equal makeup of members from outside the village and inside the village," of something similar.

105b: I need clarification. Example – vacancies occur leaving two trustees. Will it be the remaining two trustees who appoint people for the vacancies or the entire remaining

transitional selectboard? I'm wondering about having TOV SB members appointing village trustees during transition. I'm wondering this in the context of previous sections that show a preference for maintaining TOV representatives and I want to ensure Village representation is selected by the residents of the village or their representatives.

106a: 2-2-1 or 3-3-1 with the 1 at-large being voted on by the entire community and start with a three-year term.

106d: change six-member as needed and keep special commission.

108 and 109

Prior to COVID, the goal was to have a conversation with both planning commissions and boards, or at least the GOV SUB regarding the new combined town. I think we still need that conversation or something close to it to figure out how to move forward with community development and planning.

305: Strike the sentence beginning, "In the event of a tie vote..." and the following sentence regarding the vice-chair

310b: Quorum will need to be adjusted based on final makeup of SB. Do we need to state a quorum for the transitional / Interim board?

501c: Do we want to codify voting by mail? Can we?

804: We haven't discussed DRBs as a board or joint boards, at least as I know.

Other:

Can we add language that would enact a LOT on goods, alcohol / food / rooms / meals or should that be a separate vote?

Also, I would like to add language to the charter relating to assigning the new SB with the power to regulate the sale and manufacture of tobacco-related products. I'd like to extend this to marijuana-related products as well, and I believe the power exists for us to try that. I've attached to this email / doc the VLCT – CCRPC study that looks into this. Language related to municipal charters is pasted below from page 32. I'd also like to codify the prohibition of

alcohol, tobacco and marijuana products in town-owned parks, town-owned property unless otherwise permitted and on town-owned property in the **village downtown district**. I'd be happy to provide boundary suggestions. This would apply to establishments that use village property for outdoor use etc. In terms of the sample from St. Johnsbury's charter below, I'd amend that to read "all places where tobacco, cigars, and cigarettes or tobacco-related products or paraphernalia are manufactured or sold" and to include marijuana and marijuana-related products or manufacture. The VLCT-CCRPC study outlines how communities may regulate signage / advertising related to these industries as well and it may be nice to include relevant language that may be useful to that end in the future.

B. Municipal Governance Charters (page 32)

There exist three known municipal governance charter provisions that confer upon a municipality the authority to regulate tobacco products: The Town of St. Johnsbury, the Village of Lyndonville, and the Village of Wells River. The charter for the Village of Lyndonville gives the Village the authority to enact laws governing the "construction, establishment, location, use, operation, and the licensing of . . . all places where tobacco, cigars, and cigarettes are sold or disposed of..." The Village of Wells River's charter provides it with the authority to regulate the "construction, location, and use, and the licensing of . . . all places where tobacco, cigars, and cigarettes are sold or disposed of . . ." And the Town of St. Johnsbury's charter enables it to enact ordinances "with respect to the inspection, regulation, licensing, or suppression of . . . all places where tobacco, cigars, and cigarettes are manufactured or sold . . ." The Town of St. Johnsbury's charter appears to be the most expansive in its reach in that it extends not only to tobacco retailers but also to tobacco manufacturers.

The Vermont Statutes Online
Title 24 APPENDIX: Municipal Charters
Chapter 151: Town Of St. Johnsbury

§ 151-8. Ordinances and regulations

The selectmen of the Town of St. Johnsbury consistent with the Constitution and laws of the United States and of this State, shall have the power and authority to make, establish, impose, alter, amend, or repeal ordinances and regulations and to enforce the same by fine, penalty, forfeiture, injunction, restraining order, or any proper remedy, with respect to the inspection, regulation, licensing, or suppression of the following affairs, establishments, employments, enterprises, uses, undertakings, and businesses, viz:

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

VLCT Municipal Assistance Center 80

(1) The sale and measurement of wood, coal, oil, and all other fuels; hay scales; markets dealing in meat, fish, and foodstuffs; slaughterhouses; groceries; restaurants, lunch carts, and other eating establishments; all places where beverages are manufactured, processed, bottled, or sold; manufacturing establishments; saloons; taverns; innkeepers; hotels; motels; rooming houses; junk businesses; advertising billboards; overhanging signs and awnings; billiard rooms; pool rooms; bowling alleys; public halls; dance halls; theaters; moving picture houses; all **places where tobacco, cigars, and cigarettes are manufactured or**

sold; repair shops; brickyards; stone sheds; blacksmith shops; public garages; the transportation, storage, and sale of propane gas, naphtha, gasoline, kerosene, fuel oil, and other inflammable oils; the breeding, raising, and keeping of horses, cattle, swine, poultry, mink, foxes, furbearing, and other domestic animals; coal sheds; wood yards; creameries, dairies; dyeing establishments; garbage plants; gas works; livery stables; skating rinks; sewers; cesspools; privies; cow stables, barns; wells; and public dumps; oil and gasoline storage tanks, and gasoline filling stations.

Dan Kerin

I'm hesitant to suggest any substantive changes to the purposed new community charter without consulting Dan Richardson or someone else with a better understanding of the Vermont statutes and pertaining to municipalities and the make of governing boards.

However, that being said, I would support editing and/or changing subsection 105 and 106 to have interim governing board future governing boards consist of seven members. The breakdown of the governing board would be three be representatives who reside in the Town of Essex outside of the former incorporated Village of Essex Junction and three who reside in the former incorporated Village of Essex Junction. The seventh member of the board would be a representative elected from the community at large.

Amber Thibeault

Here are my initial comments on the proposed charter.

1. Section 105, preference for retaining select persons who reside outside the village. George's response to Diane noted but still would like to have a discussion about this. Why do we have to have a preference at all?
2. Section 106: the even vs. odd discussion.
3. Section 109: the even vs. odd discussion. Also, when I was on the PC we had a discussion about allowing folks to decide which committee they wanted to be on but this removes any decision.
4. Section 306: why the increase in pay? Or is this what it is now? Current charter refers to a minimum of \$500.00 a year.
5. Section 310: the chair of the PC breaking the tie?
6. Section 510: where does the 6 a.m. polls open come from. It's always been 7 a.m. – 7 p.m. I thought.
7. Section 803: staggered terms?
8. Section 1401: typo should be "the" vs. "of" "Repeal or modification of this charter shall not affect the validity of..."

George Tyler

See attached charter draft

Basically there are 3 issues:

- 1) The revelation that elected officials must be allowed to serve out their terms brings a whole new world of complexity and questions. A key example – If the charter is approved in June of 2021, then there will be 2 trustees recently elected to serve 3 year terms and 2 trustees with 2 years left for their terms. So when the new selectboard is established in spring of 2022, there will be four former trustees, all of whom live in the village, who must be allowed to serve out their terms. This is in addition to 4 members of the old selectboard, some of whom live in the village, who must also be allowed to serve out their terms. Thus – 8 elected officials, with a potential for 6 or even 7 of them from the village, who must be accommodated on the new selectboard.

If this is correct, then immediate transition to a 3-3-1 TOV-TIV-at large model is impossible. The 3-3-1 model could require 2-3 years to implement. This will be a huge political hurdle to overcome for passage of the charter so I suggest we get a consult from Dan Richardson asap.

- 2) I didn't work with Ann on the planning and development paragraph so it needs some big revisions. First, we need to ensure the preservation of the village's LDC. This is just a no brainer. Second, we need to make clear that amendments to building codes and municipal plans are subject to approval by the elected board, not the planning commission. The PC recommends revisions but the selectboard has final say. I'm not sure Ann understood this. Lastly, I believe we discussed having the PC become a pure planning body which means we need to establish a development review board to review applications. Municipalities with PCs and DRBs don't need zoning boards. The PCs handle all the theoretical zoning changes and the DRB's handle all the real-world variance requests and disputes.
- 3) ***(sorry for the long paragraph but this is important)*** Lastly, I'll bring up a touchy subject but as you know I'm personally very concerned about the oversight and direction of the Village's downtown revitalization project. I don't need to explore the reasons why but I suspect you know what I'm talking about. There's a very fundamental point that seems to be misunderstood: The village is a property developer, just like Milot or Black Rock or any other developer, with the obvious differences that we're in control of public property and we're doing it for public good. But just as a private developer has a clearly defined goal for what they want to achieve at 4 Pearl St or 3 Maple st, for example, we have a goal for what we want to achieve in the Village center that's very clearly spelled out in our municipal plan. The village community development director is the operative agent to make this happen and his efforts must be supported by the elected board *and the staff!* We've achieved wonderful results by capitalizing on public-private partnerships in the past. It surprised me that the recent opportunity for yet another money-saving, goal-achieving partnership (for improvement of the former RR site) was

instead presented to the trustees as a 'purchasing' project subject to purchasing policy. The lack of innovative thinking, enthusiasm, and vision on this was a real disappointment. Anyway – I had hoped to have a summit meeting with the village and town PCs this summer, as you know, and one of the issues I wanted to put on the agenda was how to preserve the political momentum required to continue moving forward with the Village's vision for the downtown in a merged community in which half the elected board and a new contingent of staff will have no experience and probably little interest in achieving that vision. This meeting didn't happen and so my concern remains. I'm personally not comfortable that the charter offers enough protections for the village's redevelopment efforts and, to be blunt, I'm having a hard time summoning any enthusiasm for supporting it without having this issue addressed.

TOWN OF ESSEX

PREAMBLE

The inhabitants of the Town of Essex, including the historical, unincorporated Village of Essex Junction, are a corporate and political body under the name of "Town of Essex" As such, inhabitants enjoy all rights, immunities, powers, and privileges and are subject to all the duties and liabilities now appertaining to or incumbent upon them as a municipal corporation.

Subchapter 1: Transitional Provisions

§ 101 Adoption of town and village assets and liabilities

- (a) All assets and obligations formerly owned or held by the Town and Village shall become the assets and obligations of the new Town of Essex upon the effective date of the charter. This shall include all real property, easements, rights and interests in land, buildings and other improvements; vehicles, equipment, and other personal property; assessed but uncollected taxes, rents and charges, together with lien rights and enforcement powers; moneys, rights of action in legal or administrative proceedings; insurance policies; documents and records; debts, claims, bonded indebtedness; without any further act, deed, or instrument being necessary.
- (b) All contracts, agreements, trusts, and other binding written documents affecting the Town or Village shall remain in effect on the effective date of the charter, and the new Town of Essex shall assume all the responsibilities formerly belonging to the Town and Village unless otherwise specified. Pursuant to § 104, the unincorporated Village shall become a debt assessment district until the Village's residual bond debt is retired.

§ 102 Transition Period

The transition period shall begin not later than July 1, following the approval of the charter by the Legislature, and end on June 30, 20___. At the end of the transition period, the charter will become effective and the new Town of Essex shall be fully established and organized. Nothing in this section shall affect or limit other provisions in this subchapter or in other subchapters, which serve a transitional purpose and which by their own provisions continue beyond the transitional period. In such cases, transitional provisions intended to extend beyond the transitional period shall be governed by specific sunset terms.

§ 103 Organizational Municipal Meeting

The first annual Town meeting shall occur on the same date as the Essex Westford School District preceding the July 1 effective date of the charter. This shall be a unified

meeting of the new municipality and shall be noticed and warned to all residents of the Town of Essex and unincorporated Village of Essex Junction. This meeting shall be for the purpose of presenting and discussing the budget only. Other (new Town) business may also be presented and discussed but not voted on. After presentation and discussion of the budget and any other business the meeting shall adjourn. Voting on the budget shall be by Australian ballot and shall occur on the same day as the budget vote for the Essex-Westford School District. Voting for new Essex Town elected officers shall also occur at this time. Time and holding of the meeting shall be pursuant to Subchapter 5 of the Town charter. The first annual Town meeting shall be jointly warned by the Village Trustees and Town Selectboard. The election of a moderator shall be the first order of business.

§ 104 Transitional Districts

Transitional district rates shall be set by the new Town Selectboard.

- (a) For a transitional period commencing from the July 1 effective date of the charter, the unincorporated Village of Essex Junction (formerly the incorporated Village of Essex Junction) shall be designated as a Debt Assessment District for the purpose of retiring the Village's residual bonded debt in existence before the transitional period. This residual debt is scheduled to retire in FY 2035.
- (b) For a transitional period of 12 years commencing from the July 1 effective date of the charter, the unincorporated Village of Essex Junction (formerly the incorporated Village of Essex Junction) shall be designated as a Tax Reconciliation District for the purpose of transferring the cost of the Village's municipal operations into the Town's operational budget.
- (c) For a transitional period of 12 years commencing from the July 1 effective date of the charter, the unincorporated Village of Essex Junction (formerly the incorporated Village of Essex Junction) shall be designated as a Sidewalk District for the purpose of levying a special tax on properties within the Village for the purpose of maintaining the Village's sidewalks, including snow removal and routine maintenance, but not capital repairs, in accordance with its previous sidewalk maintenance procedures prior to the merger.
- (d) For a transitional period of 12 years commencing from the July 1 effective date of the charter, the unincorporated Village of Essex Junction (formerly the incorporated Village of Essex Junction) shall be designated as a Capital Improvement District for the purpose of levying a special tax on properties within the Village for the purpose of paying for Village capital infrastructure projects on the Village's Capital Reserve Plan prior to the merger. The Capital Improvement District is not required to complete all projects in the plan prior to the end of the transitional period and the

(new governing board) shall designate in their proposed budgets which projects are to be completed in each new fiscal year of the transitional period.

(e) For a transitional period of 12 years commencing from the July 1 effective date of the charter, the Village Center Zone, as designated in the Essex Junction zoning plan, shall be designated as a Downtown Improvement District for the purpose of continuing the Village’s downtown revitalization efforts as outlined in the Village’s municipal plan. The new Town of Essex shall levy a special tax on commercial properties within the District at a rate up to but not to exceed an additional \$0.01 on the community-wide tax rate in each fiscal year to pay for infrastructure improvements, landscaping improvements and maintenance, and real estate purchases within the District in accordance with the revitalization objectives in the municipal plan.

§ 105 Interim Governing Body

(a) For the transition period described in paragraph § 102 following the approval of the charter by the Legislature, all members of the former Town Selectboard and Village Trustees shall comprise an Interim Governing Body. In no event shall the Interim Governing Body consist of less than three trustees and three selectpersons. ~~If one or two member(s) of one board resign(s) during the transition period, an equal number of members shall resign from the other board.~~ *In the event of a resignation, the remaining members of the board on which the resignation occurred shall appoint a replacement chosen from the registered voters in the communities over which they have jurisdiction.* ~~Each board shall designate its own process for determining such resignations with a preference for retaining selectpersons who reside outside the Village.~~ The Interim Governing Body shall, schedule, warn, and hold meetings as appropriate. The *(former?)* selectpersons shall address details and issues relating to expenditures in the Essex Town budget approved by voters for the fiscal year of the transitional period. The *(former?)* trustees shall address details and issues relating to expenditures in the Essex Junction budget approved by voters for the fiscal year of the transitional period. The selectpersons and trustees shall address all details and issues relating to the transition from a town and village to the new Town of Essex jointly. The Interim Governing Body with the assistance of the Unified Manager shall develop recommendations for whatever proposals or policies are needed to ensure a smooth transition. The new Town of Essex ~~S~~electboard may implement such proposals once the charter becomes effective.

~~(a)~~(b) ~~???????~~*In the event of a vacancy that results in less than three members of the former Town Selectboard or less than three members of the former Village Trustees, all remaining members shall vote to appoint a member from the district with a vacancy in a manner pursuant to § 304.???????*

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Commented [gt2]: This needs to come out. If any Essex citizen can serve on the selectboard now, what would be the legal argument for discriminating against village residents during the transition period?

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(c) The Interim Governing Body will also, with the assistance of the Unified Manager and staff, propose and warn in the manner pursuant to this charter, the first annual budget of the new Town of Essex for consideration by the voters at the first annual meeting held pursuant to § 103. This meeting shall be informational only. Voting for the budget shall occur on the same day as voting for the Essex-Westford School District budget pursuant to § 103.

~~(b)~~(d) The Interim Governing Body shall become the new Town Selectboard, pursuant to § 106, upon passage of first annual budget. All members of the new Town Selectboard shall serve for the duration of the terms for which they were originally elected as village trustees or town selectmen. For the next two election cycles the new Town Selectboard, with the assistance of the manager, shall propose and warn annual elections as necessary to achieve the new Town Selectboard structure and ward delineations pursuant to § 106. This could include elections exclusively for eligible residents in Ward 2, pursuant to § 106 (b), in the event that two or more members of the newly formed new Town Selectboard reside within Ward 1.

§ 106 Town Selectboard

(a) ~~There shall be a Town Selectboard consisting of six members.~~ *There shall be a Town Selectboard consisting of seven members.*

(b) Three members shall reside within the boundaries of the former incorporated Village of Essex Junction to be elected by the qualified voters within the boundaries of the former incorporated Village of Essex Junction. This area will become known as Ward 1. Boundary adjustments will be made over time as necessary pursuant to § 301. Three members shall reside within the boundaries of the Town of Essex exclusive of the former Village of Essex Junction to be elected by the qualified voters of the Town of Essex exclusive of the former Village of Essex Junction. This area will become known as Ward 2. Boundary adjustments will be made over time as necessary pursuant to § 301. One member shall reside in either Ward 1 or Ward 2 to be elected by the combined votes of the qualified voters in Ward 1 and Ward 2.

(c) The term of office of a Town Selectperson shall be three years and terms shall be staggered. ~~For the first election cycle six people will be elected. One seat for each ward will be for three years; one seat for each ward will be for two years; one seat for each ward will be for one year. After that, every seat shall be a three year term.~~

(d) Within three years after the first election of the six-member Selectboard, the Selectboard shall appoint a special commission to study the composition of voting wards within the Town of Essex, including the former incorporated Village of Essex Junction, and, having regard to an equal division of population and other

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Commented [gt4]: One possible option, in the event of a 2 or greater majority of village residents is to hold special elections for TOV residents to achieve a better balance of ward 1 and ward 2 representatives.

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Commented [gt5]: Not unless we want the Gov Ops committee to either amend to a 7-member board or send the whole thing back to us.

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Commented [gt6]: This all needs to come out. It's my understanding that all trustees and selectmen with more than one year left in office at the time of the passage of the merger must be allowed to serve out their terms on the new selectboard. If true, then the new selectboard could have 8 members and five or more could be from the village. Therefore it could take 2 election cycles to achieve the 3-3-1 structure.

considerations deemed proper, recommend changes to the boundaries by which members of the Selectboard are elected.

§ 107 Budget and Municipality Administration

Following the approval of the charter by the Legislature pursuant to § 103 and § 105, the Manager will propose a unified budget for the community for the next fiscal year that addresses proper service levels, contractual obligations, capital projects, debt, and that reflects any changes related to the merger.

§ 108 Village and Town Department Transitional Provisions

- (a) For a transitional period of 5 years commencing from the July 1 effective date of the charter, the manager, with the advice and consent of the new Town of Essex selectboard shall integrate the fire departments, community development and planning offices, parks and recreation offices, and any other town and village municipal services and operations, with special provisions and considerations outlined below.
- (b) The Town of Essex shall continue to operate the former Essex Junction Fire Department and Essex Town Fire Department, and each department shall have a chief appointed by the manager. At the manager’s discretion, one person may be appointed chief for both departments. During the transitional period, pursuant to § 105, the Interim Governing Body may review options for integrating the operations of the two departments for the purpose of improving efficiency and service levels and with a preference for retaining the historic identities of the two departments and for the predominant level of service remain “paid on call.”
- (c) During the five-year transitional period the manager shall integrate and reorganize the town and village recreation and parks departments and the manager shall appoint a department head.
- (d) During the five-year transitional period the manager shall integrate and reorganize the town and village community development and planning departments, and the manager shall appoint a department head.

§ 109 Planning and Zoning Development

- (a) On the effective date of this charter, the former Town plan and Village plan, and the former Town zoning bylaws and subdivision regulations, and the Village’s zoning bylaws and Land Development Code (land development code) shall remain in effect in their respective former geographic areas until amended or revised by the new Town Selectboard upon recommendation by the merged Planning Commission and in conjunction with the Chittenden County Regional

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Planning Commission and pursuant to 24 VSA 4350(a), a comprehensive re-write is presented by the merged Planning Commission and adopted by the new Town Selectboard.

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(b) Prior to the effective date of the charter, the Town Selectboard shall appoint three members of the then current town planning commission and the Village Trustees shall appoint three members of the then current village planning commission to serve on the new Town planning commission. ~~Each shall appoint one member for a one year term, one member for a two year term and one member for a three year term.~~ The duration of the first terms shall be staggered so as to establish ongoing, staggered three-year appointment schedules. The new Town Selectboard shall choose a seventh member for a four-year term, once it has organized.

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~~(c) Prior to the effective date of the charter, the Town Selectboard shall appoint two members of the then current town zoning board of adjustment and the Village Trustees shall appoint two members of the then current village zoning board of adjustment to serve on the Development Review Board. Each shall appoint one member for a one year term and one member for a two year term. The new Town Selectboard shall choose a fifth member for a three year term, once it has organized.~~ Prior to the effective date of the charter, the Town Selectboard shall appoint three members and the Village Trustees shall appoint three members to serve on the Development Review Board. The duration of the first terms shall be staggered so as to establish ongoing, staggered three-year appointment schedules. The new Town Selectboard shall choose a fifth member for a three-year term, once it has organized.
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§ 110 Unification and Adoption of Ordinances, bylaws, and rules

On the effective date of this charter, all ordinances, and bylaws of the Town of Essex and the Village of Essex Junction shall become ordinances and bylaws of the new Town of Essex. The new Town of Essex Selectboard shall be fully authorized to amend or repeal any ordinance according to the provisions of subchapter 6 of the charter. Whenever a power is granted by any such ordinance, or bylaw to an officer or officers of the Town of Essex or the Village of Essex Junction, such power is conferred upon the appropriate officer or officers of the new Town of Essex.

§ 111 Personnel

(a) Pursuant to § 105, ~~t~~he Interim Governing Body established in § 105 shall develop a pay and classification plan and make recommendations to meet the Town's needs.

The new-Town of Essex selectboard may implement such proposals once the charter becomes effective.

- (b) The Town of Essex personnel regulations in effect as of 6/30/___ shall carry over and control as of July 1, 20__ until amended by the new Town of Essex selectboard.
- (c) Employees of the Town of Essex and the Village of Essex Junction shall become employees of the new Town of Essex. The dates of hire with the Town of Essex and the Village of Essex Junction will be used as the dates of hire for purposes related to benefits with the new Town of Essex and all accrued benefits shall carry over.
- (d) Upon the effective date of the charter, employees of the Village as of June 30, 20__ shall have the option to remain in the retirement program they are enrolled in as of June 30, 20__ or to join the Vermont Municipal Employees Retirement System.
- (e) All new employees hired after the effective date of the charter will be considered Town of Essex Employees and are subject to the Town Employee Manual and/or their respective labor agreement.

§ 112 Water and Sewer Districts

Upon the effective date of the charter, there shall be a transitional phase to incorporate the municipal water system(s) and municipal sewer system(s) into one service area district. The one district shall be made up of multiple systems which follow the boundaries of the legacy systems including those operated separately by the Village of Essex Junction and the Town of Essex. Each system will have its own user base consistent with the legacy systems. Costs specific to each system will be charged solely to the user base within the boundaries of that system including capital and debt service costs. Any new costs incurred after the effective date of the charter of the merged municipality attributable to the entire district will be borne by all users. Costs attributable to specific users through a special assessment, surcharge or other contractual arrangement shall continue to be assessed to the specific users until they are paid in full.

§ 113 Finances

- (a) The existing real property tax system of the town shall become the system of the new Town of Essex. Upon the effective date of the charter, all grand lists will remain in effect and any remaining taxes due to the Village and Town will be payable to the new Town of Essex keeping all existing due dates. The new Town of Essex will manage the existing budget of the Village and Town with oversight by the Interim Governing Body.

(b) All Tax and indebtedness incurred by the Village tax payers at the time of merger are to remain with these properties until final payment of said obligations are made in full.

(c) All existing legal obligations, including but not limited to tax stabilization agreements and any agreements to purchase real property, are to be considered obligations of the new governmental entity.

§ 114 Terms Extended

The Selectboard and Trustee terms set to expire in 20__ shall be extended without further action necessary, until June 30, 20__. All other elected officials holding office at the time of Legislative approval of the charter shall remain in their seats until new elections occur or until they step down from office.

§ 115 Transitional Tax Districts and Transitional Tax Provisions.

Transitional tax districts shall be established pursuant to § 104.

§ 115 Repeals

(a) 24 App. V.S.A. chapters 117 (Town of Essex Charter) and 221 (Village of Essex Junction Charter) are repealed.

Subchapter 2: Incorporation and Powers of The Town

§ 201 Corporate Existence

The inhabitants of the Town of Essex, within the corporate limits as now established, shall be a municipal corporation by the name of the Town of Essex. This municipal corporation is a merger of and a successor to the Town of Essex (24 App. V.S.A. chapter 117 repealed) and the Village of Essex Junction (24 App. V.S.A. chapters 221 repealed).

§202 General powers, law

Except as modified by the provisions of this charter, or by any lawful regulation or ordinance of the Town of Essex, all provisions of the statutes of this state applicable to municipal corporations shall apply to the Town of Essex.

§ 203 Specific Powers

(a) The Town of Essex shall have all the powers granted to towns and municipal corporations by the Constitution and laws of this State together with all the implied

powers necessary to carry into execution all the powers granted; and it may enact ordinances not inconsistent with the Constitution and laws of the State of Vermont or with this charter.

- (b) The Town of Essex may acquire real and personal property within or without its corporate limits for any municipal purpose, including storm water collection and disposal, waste water collection and disposal, solid waste collection and disposal, provision of public water supply, provision of public parks and recreation facilities, provision of municipal facilities for office, fire protection, and police protection, provision of public libraries, provision of public parking areas, provision of sidewalks, bicycle paths, and green strips, provision of public roadways, provision of public view zones and open spaces, and such other purposes as are addressed under the general laws of the State of Vermont. The Town of Essex may acquire such property in fee simple or any lesser interest or estate, by purchase, gift, devise, lease, or condemnation and may sell, lease, mortgage, hold, manage, and control such property as its interest may require.
- (c) The Town of Essex may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with other Vermont municipalities, the State of Vermont, any one or more subdivisions or agencies of the State, or the United States or any agency thereof.
- (d) The Town of Essex may establish and maintain an electric power system and regulate power line installations; provided, however, that the Town shall have no authority under this charter which conflicts with that authority granted to the Public Utilities Commission or any other state regulatory agency.
- (e) In this charter, mention of a particular power shall not be construed to be exclusive or to restrict the scope of the powers which the Town of Essex would have if the particular power were not mentioned.

§ 204 Reservation of powers

Nothing in this charter shall be so construed as in any way to limit the powers and functions conferred upon the Town of Essex and the Town Selectboard by general or special enactments in force or effect or hereafter enacted; and the powers and functions conferred by this charter shall be cumulative and in addition to the provisions of such general or special enactments.

§205 Form of Government

- (a) The municipal government provided by this chapter shall be known as selectboard-manager form of government. Pursuant to its provisions and subject only to the

limitations imposed by the State Constitution and by this chapter, all powers of the Town of Essex shall be vested in an elective Town Selectboard, which shall enact ordinances, codes, and regulations; adopt budgets; determine policies; and appoint the Town Manager, who shall enforce the laws and ordinances and administer the government of the Town. All powers of the Town shall be exercised in the manner prescribed by this chapter or prescribed by ordinance.

- (b) Voting Districts shall be established pursuant to § 301.

Subchapter 3: Voting District and Governance Structure

§ 301 Voting Wards

- (a) The former incorporated Village of Essex Junction shall be known as Ward 1. Boundary adjustments will be made over time as necessary pursuant to § 301.b. The Town of Essex exclusive of the former Village of Essex Junction shall be known as Ward 2. Boundary adjustments will be made over time as necessary pursuant to § 301.b.
- (b) The Selectboard is empowered to make such changes from time to time, by resolution or ordinance, in the number and boundaries of the wards of the Town as it may deem proper, having regard so far as practicable and convenient, to an equal division of population among them; provided that after the first change so made, such changes shall not be made more than once in five or seven years.

§ 302 Powers and Duties of Governing body

- (a) The members of the Town of Essex Selectboard shall constitute the legislative body of the Town of Essex for all purposes required by statute, and except as otherwise herein specifically provided shall have all the powers and authority given to, and perform all duties required of town legislative bodies or selectboards under the laws of the State of Vermont.
- (b) Within the limitations of the foregoing, the Town of Essex Selectboard shall have the power to:
 - (1) Appoint and remove a Town Manager and supervise, create, change, and abolish offices, commissions, or departments other than the offices, commissions, or departments established by this charter.
 - (2) Appoint the members of all boards, commissions, committees, or similar bodies unless specifically provided otherwise by this charter.
 - (3) Provide for an independent audit by a certified public accountant.

- (4) Inquire into the conduct of any officer, commission, or department and investigate any and all municipal affairs.
- (5) Exercise every other power which is not specifically set forth herein, but which is granted to selectboards or legislative bodies by the statutes of the state of Vermont.

§ 303 Governing body composition and term of office

- (c) There shall be a Town Selectboard consisting of six members.
- (d) The term of office of a Town Selectperson shall be three years and terms shall be staggered.
- (e) Elected Selectpersons shall represent the Town and the ward they live in.

§ 304 Vacancy in office

In case of a vacancy of any elected Town official, such vacancy shall be filled by the Town Selectboard until the next annual election. The person then elected shall serve for the remainder of the unexpired term. If more than one vacancy occurs on an elected board at the same time the vacancy shall be filled by a special Town meeting called for that purpose. Separate filing shall be made for such unexpired term.

§305 Election of governing body officers

- (a) At the first meeting following the annual Town meeting, the Selectboard shall organize and elect a chairperson, vice chairperson, and clerk by a majority vote of the entire Selectboard, and shall file a certificate of the election for record in the office of the Town clerk. In the event of a tie vote, the selectperson of the two with the longest most recent contiguous service on the board shall become chair. The same shall go for vice chair and clerk.
- (b) The chairperson of the Selectboard or in the chairperson's absence, the vice chairperson, shall preside at all meetings of the Selectboard and shall be recognized as the head of the Town government for all ceremonial purposes.
- (c) In the event of death, resignation, or incapacitation of any Selectboard member, the remaining members of the Selectboard may appoint a person to fill that position until the next annual election. At the next annual election, the vacancy shall be filled and the person so elected shall serve for the remainder of the term of office. In the event the Selectboard is unable to agree upon an interim replacement until the next annual Town election, a special election shall be held forthwith to fill the position.

§ 306 Compensation

- (a) Compensation paid to the Selectboard members as reimbursement for expenses shall be set by the voters at the annual meeting, with a minimum of \$1500.00 a year each. Selectboard members compensation must be set forth as a separate item in the annual budget presented to the meeting.
- (b) The Selectboard shall fix the compensation of all officers and employees, except as otherwise provided in this charter.

§ 307 Prohibitions and conflicts of interest

- (a) Holding Other Office. No Selectboard member shall hold any other Town office or employment during the term for which he/she/they was elected to the Selectboard. No former Selectboard member shall hold any compensated appointive municipal office or employment until one year after the expiration of the term for which they were elected to the legislative body.
- (b) Appointments and Removals. Neither the legislative body nor any of its members shall in any manner dictate the appointment or removal of any municipal administrative officers or employees whom the manager or any of his subordinates are empowered to appoint, but the legislative body may express its views and fully and freely discuss with the manager anything pertaining to appointment and removal of such officers and employees.
- (c) Interference with Administration. Except for the purpose of inquiries and investigations under Section 302 (b)(4), the legislative body or its members shall deal with the municipal officers and employees who are subject to the direction and supervision of the manager solely through the manager, and neither the legislative body nor its members shall give orders to any such officer or employee, either publicly or privately.

§ 308 Governing body meetings

As soon as possible after the election of the chairperson and vice chairperson, the Selectboard shall fix the time and place of its regular meetings, and such meetings shall be held at least once a month.

§ 309 Special meetings

Special Town meetings, shall be called in the manner provided by the laws of the State, and the voting on all questions shall be by the Australian ballot system.

§ 310 Procedure

- (a) The Selectboard shall determine its own rules and order of business.
- (b) The presence of four members shall constitute a quorum. Four affirmative votes shall be necessary to take binding Selectboard action. However, in the case of a tie vote on the budget, the Chair of the Planning Commission shall cast a vote to break the tie.
- (c) The Selectboard shall in accordance with Vermont law keep minutes of its proceedings. This journal shall be a public record.
- (d) All meetings of the Selectboard shall be open to the public unless, by an affirmative vote of the majority of the members present, the Selectboard shall vote that any particular session shall be an executive session or deliberative session in accordance with Vermont law.

§ 311 Appointments

The Selectboard shall have the power to appoint the members of all boards, commissions, committees, or similar bodies unless specifically provided otherwise by this charter. The terms of all appointments shall commence on the day after the day of appointment unless the appointment is to fill a vacancy in an office, in which case the term shall commence at the time of appointment.

§ 312 Additional governing body provisions

- (a) No claim for personal services shall be allowed to the officers elected at the annual meeting, except when compensation for such services is provided for under the provisions of this chapter or by the general law. The compensation of all officers and employees of the Town shall be fixed by the Selectboard, except as herein otherwise provided.
- (b) The Selectboard may authorize the sale or lease of any real or personal estate belonging to the Town.

Subchapter 4 Other Elected Offices

§ 401 Brownell Library trustees

There shall be a five-member Board of Library Trustees who shall be elected to five-year terms using the Australian ballot system pursuant to § 501. Only qualified voters of the Town of Essex shall be eligible to hold the office of library trustee. The five permanent, self-perpetuating library trustees shall function in accordance with the terms of the Brownell Trust agreement dated May 25, 1925.

Subchapter 5 Town Meetings

§ 501 Town of Essex Meetings/Elections

- (a) Annual meetings for the election of officers, the voting on the budgets, and any other business included in the warnings for the meetings, shall be on a date established and legally warned by the Selectboard.
- (b) Provisions of the laws of the State of Vermont relating to the qualifications of electors, the manner of voting, the duties of elections officers, and all other particulars respective to preparation for, conducting, and management of elections, so far as they may be applicable, shall govern all municipal elections, and all general and special meetings, except as otherwise provided in this charter.
- (c) The election of officers and the voting on all questions shall be by Australian ballot system. The ballot boxes shall be open ~~for 12 consecutive hours~~ between 6:00 a.m. and 7:00 p.m. as shall be determined and warned by the Selectboard.

Subchapter 6 Ordinances

§ 601 Ordinances-Method of adoption and enforcement

- (a) The Selectboard may provide penalties for the breach of any ordinance authorized by general law or this charter; may prosecute any person violating the same through the Town attorney or police officers who for such purposes shall be informing officers; and may maintain actions to restrain actual or threatened violations of the same. The establishment of any fine or penalty shall be by ordinance.
- (b) Ordinance-making authority granted to the Town by this charter and general law shall be exercised pursuant to the provisions of sections § 602 through § 605 of this charter, except for zoning by-laws and/or subdivision regulations which shall be adopted pursuant to 24 V.S.A. Chapter 117, as amended from time to time hereafter.

§ 602 Introduction; first and second readings; public hearing

- (a) Every ordinance shall be introduced in writing. The enacting clause of all ordinances shall be "The Selectboard of the Town of Essex hereby ordains. . . ." If the Selectboard passes the proposed ordinance upon first reading, then the Selectboard shall cause it to be published in a newspaper of general circulation in the Town in the form passed, or a concise summary of it, including a statement of purpose, principal provisions, and table of contents or list of section headings, together with a reference to a place within the Town where copies of the full text of the proposed ordinance may be examined, at least once, together with a notice of the time and place when and

where there will be a public hearing to consider the same for final passage. The first such publication shall be at least one week prior to the date of the public hearing. Any published notice shall explain citizens' rights to petition for a vote on the ordinance at an annual or special meeting, pursuant to Vermont Statutes Annotated, Title 24 § 1973, and shall also contain the name, address and telephone number of a person with knowledge of the ordinance who is available to answer questions about it.

- (c) At the time and place so advertised, or at any time and place to which the hearing may from time to time be adjourned, the ordinance shall be introduced, and thereafter, all persons interested shall be given an opportunity to be heard.
- (d) After the hearing, the Selectboard may finally pass the ordinance with or without amendment, except that if the Selectboard makes an amendment, it shall cause the amended ordinance to be published, pursuant to subsection (a) of this section at least once together with a notice of the time and place of a public hearing at which the amended ordinance will be further considered, which publication shall be at least three days prior to the public hearing. At the time so advertised or at any time and place to which the meeting may be adjourned, the amended ordinance shall be introduced, and after the hearing, the Selectboard may finally pass the amended ordinance, or again amend it subject to the same procedures as outlined herein.

§ 603 Effective date

Every ordinance shall become effective upon passage unless otherwise specified.

§ 604 Filing and recording of ordinances

The Town clerk shall prepare and keep in the Town clerk's office a book of ordinances which shall contain each ordinance finally passed by the Selectboard, together with a complete index of the ordinances according to subject matter.

§ 605 Public nuisances

The Selectboard may prosecute and seek damages and injunctive relief to end or mitigate public nuisances.

Subchapter 7: Town Manager

§701 Appointment/Hiring of Manager

The Selectboard shall appoint a Town manager under and in accordance with Vermont Statutes Annotated, as amended from time to time hereafter. The Manager shall be

appointed solely on the basis of his or her executive and administrative qualifications in accordance with the Vermont statutes.

§ 702 Powers of Manager

The Manager shall be the chief administrative officer of the Town of Essex. He or she shall be responsible to the Selectboard for the administration of all Town of Essex affairs placed in his or her charge by or under this charter. He or she shall have the following powers and duties in addition to those powers and duties delegated to municipal managers under the Vermont statutes.

- (1) The Manager shall appoint and, when he or she deems it necessary for the good of the service, suspend or remove all Town of Essex employees, and other employees provided for by or under this charter for cause, except as otherwise provided by law, this charter, or personnel rules adopted pursuant to this charter. He or she may authorize any employee who is subject to his or her direction and supervision to exercise these powers with respect to subordinates in that employee's department, office, or agency.
- (2) The Manager shall direct and supervise the administration of all departments, offices, and agencies of the Town of Essex, except as otherwise provided by this charter or by law.
- (3) The Manager shall ~~have the authority to appoint with the advice of the Selectboard the~~ Town attorney.
- (4) The Manager shall attend all Selectboard meetings and shall have the right to take part in discussion and make recommendations but may not vote.
- (5) The Manager shall see that all laws, provisions of this charter, and acts of the Selectboard, subject to enforcement by him or her or by officers subject to his or her direction and supervision, are faithfully executed.
- (6) The Manager shall prepare and submit the annual budget and capital program to the Selectboard.
- (7) The Manager shall submit to the Selectboard and make available to the public a complete report on the finances and administrative activities of the Town of Essex as of the end of each fiscal year.
- (8) The Manager shall make such other reports as the Selectboard may require concerning the operations of Town of Essex departments, offices, and agencies subject to his or her direction and supervision.

- (9) The Manager shall keep the Selectboard fully advised as to the financial condition and future needs of the Town of Essex and make such recommendations to the Selectboard concerning the affairs of the Town of Essex as he or she deems desirable.
- (10) The Manager shall be responsible for the enforcement of all Town of Essex ordinances and laws.
- (11) The Manager may when advisable or proper delegate to subordinate officers and employees of the Town of Essex any duties conferred upon him or her by this charter, the Vermont statutes, or the Selectboard members.
- (12) The Manager shall perform such other duties as are specified in this charter or in State law, or as may be required by the Selectboard.

§ 703 Hearing/Removal Process

- (a) The Selectboard may remove the Manager from office for cause in accordance with the following procedures:
 - 1. The Selectboard shall adopt by affirmative vote of a majority of all its members a preliminary resolution which must state the reasons for removal and may suspend the Manager from duty for a period not to exceed 45 days. A copy of the resolution shall be delivered within three days to the Manager.
 - 2. Within five days after a copy of the resolution is delivered to the Manager, he or she may file with the Selectboard a written request for a hearing. Said hearing to be in a public or executive session by choice of the Manager. This hearing shall be held at a special Selectboard meeting not earlier than 15 days nor later than 30 days after the request is filed. The Manager may file with the Selectboard a written reply not later than five days before the hearing.
 - 3. The Selectboard may adopt a final resolution of removal, which may be made effective immediately, by affirmative vote of a majority of all its members at any time after five days from the date when a copy of the preliminary resolution was delivered to the Manager, if he or she has not requested a public hearing, or at any time after the public hearing if he or she has requested one.
- (b) The Manager shall continue to receive his or her salary until the effective date of a final resolution of removal.

§ 704 Vacancy in office of manger

The Manager, by letter filed with the Town Clerk, may appoint an officer or employee of the Town to perform his or her duties during his or her ~~temporary absence~~vacation, incapacitation, or disability. In the event of failure of the Manager to make such designation, the Selectboard may by resolution appoint an officer or employee of the Town to perform the duties of the Manager until he or she shall return or his or her disability shall cease. However, if the Manager has within his or her administration, formed and appointed the position of Assistant Town Manager, said Assistant shall automatically assume the Manager's responsibilities during his or her temporary absence or disability.

Subchapter 8: Boards and Commissions

§ 801 Board of Civil Authority

The Board of Civil Authority is comprised of the Town of Essex Selectboard members and Justices of the Peace.

§ 802 Board of Abatement of Taxes

The board of civil authority shall constitute a board of abatement as provided by law. The board of abatement shall meet and discharge its duties as required by the applicable statutory provisions.

§ 803 Planning Commission

There shall be a Planning Commission and its powers, obligations and operation shall be under and in accordance with Vermont Statutes Annotated, as they may be amended from time to time hereafter, and members will be appointed by the Town Selectboard for terms of three years from among the qualified voters of the Town. Members of the Commission shall hold no other Town office.

§ 804 Development Review Board

A Development Review Board shall be established and its powers, obligations and operation shall be under and in accordance with Vermont Statutes Annotated, as they may be amended from time to time hereafter, and members will be appointed by the Town Selectboard for terms of three years from among the qualified voters of the Town.

§ 805 Brownell Library trustees

There shall be a five-member Board of Library Trustees who shall be elected to five-year terms using the Australian ballot system pursuant to § 501. Only qualified voters of the Town of Essex shall be eligible to hold the office of library trustee. The trustees who are

now in office shall serve until their terms are completed. The library trustees shall establish policy for the operation of the Library and shall otherwise act in conformance with the Vermont statutes. The five permanent, self-perpetuating library trustees shall function in accordance with the terms of the Brownell Trust agreement dated May 25, 1925. The Library shall be required to follow all financial and personnel policies adopted by the Town Selectboard.

Subchapter 9: Administrative Departments

Part I

§ 901 Personnel administration and benefits

- (a) The Town manager or the Town manager's appointee shall be the personnel director. The Town manager shall maintain personnel rules and regulations protecting the interests of the Town and of the employees. These rules and regulations must be approved by the Selectboard, and shall include the procedure for amending them and for placing them into practice. Each employee shall receive a copy of the rules and regulations when he or she is hired.
- (b) The rules and regulations may deal with the following subjects or with other similar matters of personnel administration: job classification, jobs to be filled, tenure, retirement, pensions, leaves of absence, vacations, holidays, hours and days of work, group insurance, salary plans, rules governing hiring, temporary appointments, lay-off, reinstatement, promotion, transfer, demotion, settlement of disputes, dismissal, probationary periods, permanent or continuing status, in-service training, injury, employee records, and further regulations concerning the hearing of appeals.
- (c) No person in the service of the Town shall either directly or indirectly give, render, pay or receive any service or other valuable thing for or on account of or in connection with any appointment, proposed appointment, promotion or proposed promotion.

Part II

§ 902 Department of Real Estate Appraisal

There shall be established a department of real estate appraisal headed by a professionally qualified real estate assessor, who shall be appointed by the manager, ~~with the advice of the Selectboard.~~

§ 903 Appraisal of property

The department of real estate appraisal shall appraise all real and business personal property for the purpose of establishing the grand list. Appraisals shall be reviewed

periodically and kept up to date. Technically qualified individuals or firms may be employed as needed.

§ 904 Appraisal of business personal property for tax purposes

Appraisal of business personal property shall be in accordance with the provisions of Vermont Statutes Annotated, Title 32 § 3618, as the same may from time to time be amended, provided that all business personal property acquired by a taxpayer after September 30, 1995 shall be exempt from tax.

§ 905 Duties of Department

The duties and powers of the department of real estate appraisal shall be the same as those established for listers under the general statutes.

§ 906 Purpose

The purpose of the department of real estate appraisal is to provide for appointment of a qualified real estate assessor rather than the election of listers. The Town shall be governed by, and each taxpayer shall have rights granted by, the applicable statutes concerning real and personal property taxation, appeal therefrom, and other statutes concerning taxation.

Subchapter 10 Budget Process

§ 1001 Fiscal year

The fiscal year of the Town shall begin on the first day of July and end on the last day of June of each calendar year. The fiscal year shall constitute the budget and accounting year as used in this charter.

§ 1002 Annual municipal budget

With support from the finance department, the Town Manager shall submit to the Selectboard a budget at least 50 days before annual town meeting or at such previous time as may be directed by the Selectboard. The budget shall contain:

- (1) An estimate of the financial condition of the Town as of the end of the fiscal year.
- (2) An itemized statement of appropriations recommended for current expenses, and for capital improvements, during the next fiscal year; with comparative statements of appropriations and estimated expenditures for the current fiscal year and actual appropriations and expenditures for the immediate preceding fiscal year.

(3) An itemized statement of estimated revenues from all sources, other than taxation, for the next fiscal year; and comparative figures of tax and other sources of revenue for the current and immediate preceding fiscal years.

(4) A capital budget for the next five fiscal years, showing anticipated capital expenditures, financing, and tax requirements.

(5) Such other information as may be required by the Selectboard.

§ 1003 Governing Body's action on the budget

The Selectboard shall review, and approve the recommended budget with or without change. The budget shall be published not later than two weeks after its preliminary adoption by the Selectboard. The Selectboard shall fix the time and place for holding a public hearing for the budget, and shall give a public notice of such hearing.

§ 1004 Meeting warning and budget

(a) The Selectboard shall hold at least one public hearing at least 30 days prior to the annual meeting to present and explain its proposed budget and shall give a public notice of such hearing.

(b) The Town Manager shall not less than 15 days prior to the annual meeting print and distribute the Selectboard recommended budget and the final warning of the pending annual meeting.

§ 1005 Appropriation & Transfers

(a) From the effective date of the budget, the amounts stated therein, as approved by the voters, become appropriated to the several agencies and purposes therein named.

(b) The manager may at any time transfer an unencumbered appropriation balance or portion thereof between general classifications of expenditures within an office, department or agency. At the request of the manager, the Selectboard may, by resolution, transfer any unencumbered appropriation balance or portion thereof within the Selectboard budget from one department, office or agency to another. Notwithstanding the above, no unexpended balance in any appropriation not included in the Selectboard budget shall be transferred or used for any other purpose.

§ 1006 Amount to be raised by taxation

Upon passage of the budget by the voters, the amounts stated therein as the amount to be raised by taxes shall constitute a determination of the amount of the levy for the purposes of the Town in the corresponding tax year, and the Selectboard shall levy such taxes on the grand list as prepared by the assessor for the corresponding tax year.

Subchapter 11: Taxation

§ 1101 Taxes on real and personal property

Taxes on real and personal property shall be paid in two equal payments, with one-half of the annual tax bill for each taxpayer due and payable ~~on no later than~~ September 15 and March 15, or in the case of a weekend, the next business day, of each fiscal year or pursuant to such other schedule as the Selectboard may adopt by resolution, bylaw or ordinance.

§ 1102 Penalty

- (a) An additional charge of eight percent shall be added to any tax not paid on or before the dates specified in section § 1101 of this charter, and interest as authorized by Vermont statutes.
- (b) The Selectboard shall have the authority to waive penalty on late payments in the case of natural disaster, pandemic, or economic downturns at their discretion.

§ 1103 Assessment and taxation agreement

Notwithstanding section § 904 of this charter and the requirements of the general laws of the State of Vermont, the Selectboard are hereby authorized and empowered to negotiate and execute assessment and taxation agreements between the Town and a taxpayer or taxpayers within the Town of Essex consistent with applicable requirements of the Vermont Constitution.

Subchapter 12: Capital improvements

§ 1201 Capital programs

- (a) The Manager shall prepare and submit to the Selectboard a five-year capital program at least three months prior to the final date for submission of the budget.
- (b) Contents. The capital program shall include:
 - 1. A clear general summary of its contents;

2. A list of all capital improvements which are proposed to be undertaken during the five fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements;
3. Cost estimates, method of financing, and recommended time schedules for each such improvement; and
4. The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

Subchapter 13: Amendment of Charter and Initiatives

§ 1301 Laws governing

This charter may be amended in accordance with the procedure provided for by state statutes for amendment of municipal charters.

Subchapter 14: General

§ 1401 Savings clause

Repeal or modification of this charter shall not affect of validity of previously enacted ordinance, resolution, or bylaw.

§ 1402 Separability of provisions

The provisions of this charter are declared to be severable. If any provisions of this charter are for any reason invalid, such invalidity shall not affect the remaining provisions, which can be given effect without the invalid provision.

VERMONT LEAGUE OF CITIES & TOWNS

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

Prepared by:

Garrett Baxter, Senior Staff Attorney
Vermont League of Cities and Towns
Municipal Assistance Center
November 2016

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Executive Summary

This report provides an analysis of available authority under Vermont law to regulate alcohol and tobacco at the municipal level and provide specific examples of such municipal regulations currently in effect.

In reviewing the available authority to regulate alcohol and tobacco, this report focuses on municipal ordinances, municipal governance charters, state and local licensing schemes, land use controls, and municipal policies. Each regulatory option is necessarily analyzed in the context of Vermont as a Dillon's rule state, meaning that a municipality has only those powers and functions specifically authorized by the Legislature and such additional functions as may be incident, subordinate or necessary to the exercise thereof.

Findings

Because Vermont is a Dillon's rule state, if the Legislature has not expressly granted municipalities the authority (e.g. mandatory or permissive grants of authority; municipal governance charters) to regulate alcohol and tobacco products, then it must be assumed that such power does not exist, and consequently municipalities cannot act. State statutory authority authorizing municipalities to regulate alcohol and tobacco at the local level is primarily promulgated and enforced through local ordinances. A municipal ordinance must recite the statutory authority for enacting the legislation at the local level. Ordinances may be civil or criminal in nature and may attach \$800 and \$500 penalties, respectively, to each and every violation.

With respect to regulating alcohol, the broadest statutory grant of authority given to municipalities is the power to define and regulate public nuisance through ordinances, and to provide procedures and take action for its abatement or removal as public health, safety, or

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welfare may require. Because municipal regulatory authority over alcohol however is both generous and explicit and the exact contours of municipal nuisance authority is so ill defined, this authority should not be relied upon exclusively, but should only be referenced as a secondary source to address the negative effects associated with alcohol. For example, municipalities also have the explicit authority to regulate or prohibit the possession of open or unsealed containers of alcoholic beverages and the consumption of alcoholic beverages in public places. Many municipalities regulate in such a manner, but grant exceptions when written permission is obtained from the selectboard. Municipal authority to regulate commercial entertainment, such as carnivals and shows, creates incidental and implied authority to regulate alcoholic beverages at such events. The voters of a municipality can also elect to condition the issuance of a liquor license at such events upon compliance with local ordinances regulating entertainment, and further, to suspend or revoke a liquor license for violation of such ordinances.

Vermont is rated “high,” with respect to regulating smoking by the Federal Centers for Disease and Control, and as a “green” state, meaning it has comprehensive State smoke-free policies—laws that prohibit smoking in all indoor areas of private workplaces, restaurants, and bars, with no exceptions. This State law prohibition includes all indoor municipal buildings and sets a regulatory floor with respect to smoking in public places. Municipalities may be more, but not less restrictive when it comes to regulating smoking in public places including prohibiting the smoking or use of tobacco in outdoor areas, such as municipal parks, playgrounds, and recreation areas. Though no municipality in Vermont has banned smoking in *all* outdoor public places, the authority is likely present.

Municipalities also have the ability to deviate from general Vermont law through the adoption of municipal governance charters. While there are no municipal charters that expand the scope of municipal regulatory authority over alcohol, many charters contain a 1% local option tax on alcohol. Though not regulatory in nature, a local option tax of 1% can be a powerful tool in furthering municipalities public health policy goals related to alcoholic consumption. Three

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municipal charters exist in Vermont which give authority to regulate tobacco establishments with respect to construction, location, use, operations and licensing.

The State of Vermont administers and enforces categories of liquor licenses related to the manufacture and sale of alcohol. Local selectboards serve as the State's local liquor control commissioners and may, with the State's approval, issue first and second class liquor licenses. Pre-approval from local liquor control commissioners is a prerequisite to the State's issuance of special event permits. Although local liquor control commissioners are extensions of the State and therefore must carry out the regulations promulgated by the State of Vermont Liquor Control Board, they still retain some discretionary authority in granting licenses. For example, municipalities may also require hotels and restaurants to obtain a license to operate and serve alcohol—and revoke or suspend such license when the public good requires it. Alternatively, municipalities may vote at duly warned special or annual town meeting to opt out of this licensing scheme all together by prohibiting the sale of malt and vinous beverages or spirits and fortified wines within their jurisdictional limits.

Municipalities' role in the State's tobacco product retailer licensing scheme is non-discretionary and ministerial. State law recognizes no local tobacco retail licensing requirements.

Municipalities may limit alcohol and tobacco purveyors by restricting them to certain designated zoning districts. While Vermont law in some instances prevents municipalities from regulating certain uses of land or structures, such is not the case for alcohol or tobacco retailers. Thus, they are potentially subject to all land use restrictions available as long as any zoning bylaws avoid being overly broad or vague.

Finally, Vermont law provides local legislative bodies with the ultimate control over all municipally-owned lands and buildings. Though the public has the right to use public property (including municipal buildings), a municipality can limit access and regulate use of alcohol in its facilities through policies. State law prohibits smoking in all public buildings, nevertheless,

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municipalities may condition use of their facilities on compliance with State law and incorporate a provision in their policies that terminate agreements for noncompliance.

Conclusions and Recommendations

Although municipalities are limited because Vermont is a Dillon's rule state, the Legislature has delegated them authority to regulate alcohol and tobacco that is fairly expansive. Municipalities can enact local ordinances, create or amend governance charters, and utilize land use controls to regulate the sale, possession, and consumption of alcohol and tobacco. A municipality can also vote to prohibit the sale of alcohol products entirely.

Courts will review the legality of municipal zoning bylaws by starting with the proposition that the bylaws are presumed valid and only overturn such bylaws if they are clearly unreasonable, irrational, arbitrary, or discriminatory. Any land use regulations on alcohol retailers or tobacco retailers should be supported by strong language in the municipal plan citing studies evidencing the dangers of alcohol and tobacco as well as set forth goals and objectives through the implementation of bylaws for the mitigation of these hazards.

Municipalities in Vermont tend to "do what they have always done," only looking at past successful practices. Given the multiple options potentially available to regulate alcohol and tobacco, municipalities could be more creative and aggressive in their approach moving forward.

PART I

I. Introduction

The Chittenden County Regional Planning Commission has commissioned the Vermont League of Cities and Towns to prepare this report reviewing Vermont laws identifying municipal authority to enact alcohol and tobacco control regulations; providing specific examples of such municipal regulations currently in effect; and developing a user-friendly chart summarizing municipal regulatory authority in these fields.

A. The Municipal Regulatory Context: Dillon's Rule

Vermont is one of only 11 states whose constitution does not grant municipal home rule – i.e., local control over matters that are truly local in nature without state legislative oversight. Rather, Vermont is what is known as a Dillon's Rule State. First espoused by its namesake, federal and Iowa state court judge John Forrest Dillon, this legal principle stands for the proposition that since municipalities emanate from and owe their existence to the state that they therefore have no powers or rights independent of the state. Local control exists in Vermont exclusively by license – a municipality may do only what the Legislature authorizes it to do; it has no independent law-giving authority. The Vermont Supreme Court has held that, “(w)e have consistently adhered to the so-called Dillon's rule that ‘a municipality has only those powers and functions specifically authorized by the legislature, and such additional functions as may be incident, subordinate or necessary to the exercise thereof.’ *In re Petition of Ball Mountain Dam Hydro. Project*, 154 Vt. 189, 192 (1990) (quoting *Hinesburg Sand & Gravel Co. v. Town of Hinesburg*, 135 Vt. 484, 486 (1977)). Judge Dillon, in his treatise on Municipal Corporations (5th ed.), wrote that in accordance with this rule, municipalities have only three powers: “First, those granted in express words; second, those necessarily or fairly implied or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable.” The legislature's grant of authority under this rule is narrowly construed so that any ambiguities as to its existence must necessarily be weighed against the municipality. “But if any fair, reasonable doubt exists

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concerning this question it must be resolved against the defendant, and its power defined.” *Aime Valcour v. Village of Morrisville*, 104 Vt. 119 (1932). This rule is critical in terms of understanding Vermont municipal regulatory control over alcohol and tobacco because if the Legislature has not expressly granted municipalities the power to control these substances, then it must be assumed that such power does not exist and consequently that municipalities cannot act. In Vermont, and for purposes of this review, the State primarily employs three vehicles by which it grants municipalities power to regulate alcohol and tobacco: 1. specific provisions in general State statutes (self-executing and enabling); 2. municipal governance charters; and 3. the comprehensive state alcohol and tobacco licensing system. All three of these types of authority may only be exercised by municipalities within the confines of their respective jurisdictional limits.

1. State Statutes

The power of municipalities originates from the State’s police power. This is the “inherent and plenary power of a sovereign to make all laws necessary and proper to preserve the public security, order, health, morality, and justice.” Black’s Law Dictionary, 8th Ed. (1999). The constitutional basis for this power is Chapter I, Article 2 of the Vermont Constitution which states, “[t]hat private property ought to be subservient to public uses when necessity requires it.” This authorizes the use of police power by the State for the purpose of protecting the public health, safety, and welfare. As a Dillon’s Rule state, Vermont delegates some of its police power to municipalities to exercise limited regulatory authority through Vermont’s general statutes. Absent a governance charter, State statute is the source for all local legislative authority in municipalities. These statutes take the form of either mandatory or permissive grants of authority. Those permissive grants of authority can be categorized as either self-executing or enabling. A self-executing statute confers upon municipalities the immediate authority to act without any implementing legislative enactment at the local level such as an ordinance. An enabling statute confers upon municipalities the authority to act contingent upon the passage of an ordinance or rule in accordance with the statutorily-prescribed process delineated in 24 V.S.A. §§ 1971 et seq. An ordinance is “an expression of the municipal will, affecting the conduct of the

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inhabitants generally, or of a number of them under some general designation.” *City of Barre v. Perry & Schribner*, 82 Vt. 301 (1909).

Municipal authority to make law is narrowly defined by statute or governance charter. A municipality may not enact an ordinance unless the Legislature has expressly granted it the authority to adopt local legislation on the subject. Where the State law establishes limits on the ordinance, the municipality must stay within those limits. Municipalities may designate violations of ordinances as either civil or criminal and may set civil penalties up to \$800.00 per day, with each day the violation continues constituting a new offense. 24 V.S.A. §§ 1974, 1974a. Most municipalities designate their ordinances as civil in order to take advantage of the civil enforcement process. The Vermont Legislature has authorized municipalities to enforce their civil ordinances by writing municipal complaints (tickets), which are processed, through the Vermont Judicial Bureau (formerly known as “traffic court”).

2. Municipal Governance Charters

Not all municipalities follow the same rules. Some have special laws that apply only to them. These are called municipal governance charters. A municipal governance charter is a special legislative enactment particular to an individual municipality allowing it to deviate from the general State law that otherwise governs all others. Because a charter is approved by the Legislature it has the same status as a statute, however it typically takes precedence over otherwise governing general State law. Where a charter provides for procedures or the exercise of authority other than those established by statute, the provisions of the charter will generally prevail unless the statute or charter specifically reserves otherwise. Municipal governance charters are adopted/amended/repealed in accordance with the statutorily-prescribed process mandated in 17 V.S.A. § 2645. In order to request that the Legislature amend its charter, a majority of the legal voters of the municipality must have approved the charter change proposal by an Australian ballot vote at an annual or special meeting duly warned for that purpose. Fifty-two cities and towns – 53 percent of the State’s population – have adopted a Legislatively approved governance charter, as have 25 incorporated villages.

3. State/Municipal Licensing

The State of Vermont licenses tobacco retailers and purveyors of vinous, malt and spirituous beverages. The degree to which municipalities play a role in these State regulatory schemes is determined by statute and, where permitted, is influenced by local ordinance. In this state-defined role, municipalities serve as agents of the State, acting in a limited quasi-judicial or administrative capacity on the State's behalf to effectuate the State's alcohol and tobacco-related licensing goals and objectives.

4. Vermont's Municipal and Regional Planning and Development Act

Zoning is the regulation of the use of land and the built environment. In its simplest form, zoning delineates a geographic area into separate uses with varying dimensional standards and limitations on development. Black's Law Dictionary defines it as "[t]he legislative division of a region, esp. a municipality, into separate districts with different regulations within the districts for land use, building size, and the like." Black's Law Dictionary (7th ed. 1999). The Vermont Legislature has expressly authorized municipalities to engage in the practice of zoning through the passage of the Vermont Municipal and Regional Planning and Development Act which is found in Title 24, Chapter 117 of the Vermont Statutes. Municipalities are authorized but not required to enact zoning bylaws. According to a December 15, 2014 report prepared by the Vermont Department of Housing and Community Affairs (DHCD), "78% of municipalities have municipal plans confirmed by their regional planning commissions and 53% of municipalities have zoning and subdivision regulations."

Through the use of zoning, municipalities can classify uses of land as either "permitted," "prohibited," or "conditional." When a use is designated by regulation as "permitted" that does not mean that such use is exempt from regulatory oversight and authorization. There is still a need to go through the local permitting process. The determination that a use falls within the category of permitted uses must be made by an administrative officer (also known as a zoning administrator or "ZA") who, upon receiving an application for a use that is permitted, generally must grant a municipal land use permit to that applicant before any development commences.

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“No land development may be commenced within the area affected by the bylaws without a permit issued by the administrative officer.” 24 V.S.A. 4449(a)(1).

Uses that are classified as “conditional” are simply those that may be permitted by the local land use panel (defined in statute as Appropriate Municipal Panels and also known as AMPs) after “conditional use review.” Such review may result in the granting of a permit with certain prescribed conditions. The range of standards governing review conditional use review by a land use board is established by the Vermont Legislature in 24 V.S.A. § 4414(3). These include general standards imposed by State law as well as more specific criteria that the municipality has set forth through its land use regulations (i.e. bylaws). 24 V.S.A. § 4414(3).

Municipalities are also given wide latitude by the State to enact zoning bylaws that confine, reduce, prevent the expansion of, or eliminate nonconforming uses. 24 V.S.A. § 4411(b)(2). A “nonconforming use” is defined by the State as a “use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error by the administrative officer.” 24 V.S.A. § 4303(15).

Beyond these regulatory allowances, and mandated compliance with stated limitations and prohibited effects in 24 V.S.A. §§ 4412, 4413, municipalities may enact land use regulations such as zoning bylaws, site plan bylaws, subdivision bylaws, unified development bylaws, official maps, impact fees, phasing, transfer of development rights, and/or special or freestanding bylaws to regulate land development within their jurisdictional confines so long as they are consistent with their own municipal plans and the State’s declared planning goals. “Any municipality that has adopted and has in effect a plan and has created a planning commission under this chapter may implement the plan by adopting, amending, and enforcing any or all of the regulatory and non-regulatory tools provided for in this chapter. All such regulatory and non-regulatory tools shall be in conformance with the plan, shall be adopted for the purposes set forth in section 4302 of this title, and shall be in accord with the policies set forth therein.” 24 V.S.A. § 4401.

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Finally, it should be noted that one of the stated purposes for which municipalities may enact zoning bylaws is to promote public health. “A municipality may regulate land development in conformance with its adopted municipal plan and for the purposes set forth in section 4302 of this title to govern the use of land and the placement, spacing, and size of structures and other factors specified in the bylaws related to *public health*, safety, or welfare.” 24 V.S.A. § 4411(a). (Emphasis added).

5. Municipal Policies

In contrast to an ordinance, which becomes legally-enforceable local law once duly-adopted, a policy is a statement regarding a course of action, guiding principle, procedure or strategy designed to influence and determine decisions in the course of conducting general municipal affairs. Policies are designed to establish an objective, orderly and systematic method for handling certain administrative duties while providing consistency and continuity in decision-making. Unlike an ordinance, a policy is adopted by resolution (majority vote of a legislative body at a duly warned meeting) and is not subject to the public notice and recording requirements associated with an ordinance, nor is it subject to the voter-backed permissive referendum process detailed in 24 V.S.A. § 1973. Whereas ordinances and zoning bylaws are legislative in nature and oriented outward as an expression of municipal will affecting the conduct of the general populace, policies are executive in nature and are oriented inwards to guide internal decision making processes. Generally, policies apply to employees, town facilities or the legislative body itself.

II. Municipal Authority to Regulate Alcohol

A. State Statutes/Municipal Ordinances

The Vermont Legislature delegates relatively ample and explicit regulatory authority to municipalities to enact laws controlling alcohol. This is in contrast with what at first glance seems to be the limited and vague grant of authority conferred upon municipalities regarding the use and possession of tobacco products. The broadest grant of authority in this or any other context

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is the power for municipalities to define and subsequently regulate public nuisances. “For the purposes of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers: To define what constitutes a public nuisance, and to provide procedures and take action for its abatement or removal as the public health, safety, or welfare may require.” 24 V.S.A. § 2291(14).

According to the Vermont Supreme Court “to be considered a public nuisance, an activity must disrupt the comfort and convenience of the general public by affecting some general interest.” *Napro Development Corporation v. Town of Berlin*, 135 Vt. 353, 376 (1977). To determine whether a municipal nuisance ordinance was a proper exercise of its delegated authority, a court will look to see whether it bears a real and substantial relationship to the public health, safety, welfare, and convenience that it was intended to advance. See e.g. *Champlain Valley Exposition v. Village of Essex Junction*, 131 Vt. 449 (1973). Municipal nuisance authority provides a seemingly open-ended range of subject matter over which a municipality may regulate. However, in a Dillon’s Rule state where authority comes in the form of limited grants, municipalities should not be tempted by the allure of this seemingly far-reaching power. The Vermont Supreme Court has warned that municipalities should not stretch this nuisance authority beyond the point of losing all recognition. See *Napro Development Corporation v. Town of Berlin*, 135 Vt. 353, 356 (1977), in which the Court declared that “[w]e believe that the concept of public nuisance is vague and amorphous...”

Because municipal regulatory authority over alcohol is both generous and explicit there is less of a need to rely upon nuisance authority to accomplish municipal policy goals of prohibiting its open possession and/or consumption of alcohol. Nevertheless, conventional legal wisdom holds that it is still advisable to cite to this source of municipal authority (24 V.S.A. § 2291(14)) when enacting ordinances based on the more specific authority referenced below as a sort of belt and suspenders approach. With respect to regulating alcohol, the real value of municipal nuisance ordinances can be found in prohibiting the negative secondary effects associated with its sale and consumption such as excessive and disturbing noise. This indirect approach, which can augment an exercise of more direct municipal regulatory authority discussed below, also has a very real

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direct application to liquor licenses. State law allows the voters of a municipality at a duly-warned special or annual municipal meeting to authorize the local liquor control commissioners to condition the issuance of a liquor license upon compliance with any duly-adopted local ordinance regulating entertainment [24 V.S.A. § 2291(11)] or public nuisances [24 V.S.A. § 2291(14)] and to suspend or even revoke a liquor license or permit for violation of such a condition imposed.

If the municipality so votes at a meeting duly warned for that purpose, the local control commissioners may, in the exercise of their authority under subdivision 222(1) of this title, condition the issuance of licenses and permits upon compliance, during the term of the license or permit, with any ordinance regulating entertainment or public nuisances that has been duly adopted by the municipality . . . The local control commissioners may . . . suspend or revoke a liquor license or permit for violation of any condition placed upon the issuance of a license or permit under subsection (b) of this section. 7 V.S.A. §§ 167(b)(c).

There are two specific statutory provisions which give municipalities the discretionary authority (i.e. “enabling authority”) to regulate alcohol in public places. Pursuant to 24 V.S.A. §§ 2291(17)(18) municipalities *may* regulate or prohibit the possession of open or unsealed containers of alcoholic beverages and the consumption of alcoholic beverages in public places. The term “public places,” which is not defined for purposes of these statutes, is generally understood to encompass all municipal property and buildings including municipal halls and offices, playgrounds, parks and forests, fairgrounds, public highways, sidewalks, bridges, or parking lots; as well as all private property that has been made open to the general public. This is seen in the ordinance of the City of Barre, City of Burlington, City of Rutland, Town of Bennington, and Town of Brattleboro.

A review of the applicable sample ordinances researched reveals that each municipality establishes exceptions, some with conditions, to its otherwise expansive regulatory control. In

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some instances, exceptions are explicitly provided for in the body of the ordinance. For instance, the City of Barre Codes of Ordinances states that,

it shall not be unlawful to possess an open beverage container (defined as a “container, bottle, can or vessel containing malt or vinous beverages or spirituous liquors, which is opened”) or to consume the contents thereof in the Municipal Auditorium and its grounds, the Barre Opera House and its upstairs lobby, Rotary Park Picnic area, or any other city-owned public place when the event where alcoholic beverages will be consumed has been authorized by the City Council with the following restrictions: The contents of the open beverage container must be consumed between the hours of 7:00 a.m. and 9:00 p.m. daily.
City of Barre Code of Ordinances, Sec. 11-27(d)(b)(i).

In other ordinances, exceptions are contingent upon written permission from either the Board of Local Liquor Control Commissioners, Selectboard, or Town Manager. The City of Rutland states that,

[u]pon first obtaining a written permit, which may be included within the regular permit granted for use of such property, any publicly recognized organization or organized group, or family group, may be exempted from the provisions of section 3504 of this ordinance for a short period of time only, not to exceed twenty-four hours, subject to all other laws and ordinances. Permits may be obtained from the board of control commissioners for all events, upon written request.
City of Rutland Code of Ordinances, Title 19, Chapter 5, Section 3505.

The Town of Brattleboro provides that,

[u]pon first obtaining a written permit, a group of employees of the Town of Brattleboro who wish to sponsor an event to be held within

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a building leased or owned by the Town may be exempted from the provisions of section 1.5-16 for a short period of time only, not to exceed six (6) hours, except that no permits shall be issued for school property. Permits may be obtained from the Town Manager.

Town of Brattleboro Code of Ordinances, Chapter 1.5, Sec. 1.5-17.

The Town of Bennington states that,

[t]he provisions of this section shall not apply to premises where such liquors are legally sold for consumption on said premises or to recreational areas in which facilities are provided for picnics or to publicly-owned lands when the Select Board has granted approval for sale and/or consumption of such liquors.

Town of Bennington Book of Ordinances, Article 16-4.

In at least one ordinance, exceptions are provided both within the body of the ordinance and by permission of the local legislative body. The City of Montpelier's ordinance reads,

The provisions of this ordinance shall not apply to: (1) Hubbard Park; (2) the Elm Street Athletic Field, except when school-sponsored events are in progress; (3) Dog River Recreation Area, except when school sponsored events are in progress; (4) an area or event at which consumption of alcoholic beverages is authorized by the City Council or Board of School Commissioners; or (5) any place or vent licensed for on-premise sale of alcoholic beverages.

City of Montpelier Code of Ordinances, Article VIII, Sec. 11-800(b).

The Vermont Legislature has also delegated the authority to "regulate, license, tax or prohibit circuses, carnivals, and menageries and all plays, concerts, entertainments, or exhibitions of any

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kind for which money is received.”¹ 24 V.S.A. § 2291(11). While the law allowing municipalities to adopt ordinances to regulate commercial entertainment does not explicitly reference the ability to restrict or prohibit the possession or consumption of alcoholic beverages, it has been used for those purposes. For example, Section 5(h) of the City of South Burlington’s “Ordinance Regarding Licensure and Regulation of Circuses, Carnivals and Other Shows” provides the City Manager with the discretionary power to “attach such reasonable conditions as the Manager may deem appropriate to mitigate or eliminate any impacts” reviewable under the ordinance’s approval standards including “restricting or prohibiting the consumption of alcoholic beverages in connection with any regulated activity.” The City of Burlington’s Parades and Street Events Ordinance suggests that similar restrictions may be imposed; “the following limitations on block parties may be incorporated as conditions of the permit: No alcohol shall be dispensed or consumed on public property.” Code of Ordinances of the City of Burlington, Vermont, Article I, Chapter 27-5(d)(2). Support for the exercise of this authority can be found in the Legislature’s use of the broad term “to regulate.” Incident to this express delegation of authority is the implied power to address those negative externalities ordinarily associated with large gatherings such as traffic congestion, sufficient parking, crowd control, noise issues, trash and litter collection, security, the consumption of alcohol, and a host of other health and safety considerations.

B. Municipal Governance Charters

There currently exist no municipal governance charter provisions which expand the scope of municipal regulatory authority of alcohol beyond that which already exists for municipalities as provided by Vermont general law. Those charter provisions that make reference to “alcohol” do so in the context of expanding municipalities’ taxing authority by giving them the power to impose a 1% local options tax on alcoholic beverages that they otherwise lacked as the State’s local options tax general statute only grants that authority to a discrete, qualifying class of municipalities. 24 V.S.A. § 138. See e.g. City of South Burlington, City of Winooski, Town of

¹ A municipality’s authority to regulate commercial entertainments including public assemblies is independent of the State’s authority to regulate large public gatherings. The law on the State’s authority says that a gathering of 2,000 or more individuals in a public space constitutes a “commercial public assembly” and triggers the permitting authority of the State. 20 V.S.A. §§ 4501 et seq.

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Colchester, Town of Middlebury, Town of St. Albans, and the Town of Williston. Though not regulatory in nature, a local options tax can nonetheless be a powerful tool in furthering a municipality's public health policy goals concerning the cessation of alcohol consumption. According to the federal Centers for Disease and Control's (CDC) 2013 Prevention Status Report (PSR) on excessive alcohol use, Vermont's excise tax per gallon of beer as of January 1, 2012 was \$0.27 while its tax on the same amount of wine was \$0.55. Both of these State taxes received a rating of "red" from the CDC which it defines as "either absent or not established in accordance with supporting evidence and/or expert recommendations." Studies show, according to the CDC, that increasing both of these taxes by 10% would likely reduce consumption by approximately 5% and 6% respectively. While only the State could impose such a percentage tax, the imposition of a 1% tax by municipalities could result in at least some corresponding reduction in consumption.

C. State/Municipal Licensing

The State of Vermont administers and enforces several different categories of licenses related to the manufacture and sale of alcoholic beverages. In some instances, this is done in conjunction and collaboration with municipalities. The selectpersons of each municipality serve as the State's local liquor control commissioners. With the approval of the State Liquor Control Board, the local control commissions may grant first and second class liquor licenses. 7 V.S.A. §222. A first class license allows the license holder to sell alcoholic beverages for consumption only on the licensed premises. A second class license allows the license holder to sell packaged beverages for off-premise consumption. 7 V.S.A. § 222. Pre-approval from the local liquor control commissioners is a prerequisite to the State issuance of festival permits, special event permits, educational sampling event permits; and art gallery, bookstore, library or museum permits where spirits, malt and vinous beverages will be sold, sampled or served. See Appendix A for a chart of licenses. The duty of the local liquor control commissioners is almost exclusively to carry out the State's alcohol licensing system. In doing so, "[t]hey are subordinate to the liquor control board, not to the town. Hence, when the selectmen are functioning as commissioners, they are under the control of the State, not the town." *Verrill v. Dewey*, 130 Vt. 627, 635 (1972) (internal citations omitted). Local liquor control commissioners are extensions of the State and agents of the State.

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Because of that relationship, a municipality is not liable for the acts of its local liquor control commissioners.² The State mandates that the local liquor control commissioners “administer such rules and regulations, which shall be furnished them by the Liquor Control Board, as shall be necessary to carry out the purposes of this title.” 7 V.S.A. § 167(a). They must then operate under the laws and regulations governing the sale of alcoholic liquor, which are promulgated by State of Vermont Liquor Control Board. However, the language of the statute indicates that the local liquor control commissioners are not without discretionary authority. Statute provides that with the approval of the State Liquor Control Board, the local liquor control commissioners “may” grant a license. 7 V.S.A. § 222(1). The use of the term “may” implies that the local liquor control commissioners have some level of discretion. In *Billado v. Control Commissioners*, 114 Vt. 350, 351 (1947), the Vermont Supreme Court stated that in denying a liquor license, “the control commissioners may act upon the basis of any knowledge or information available to them, so long as their action is not arbitrary or capricious, but is made in good faith and with a view of advancing the purpose and policy of the law.”

Since 7 V.S.A. § 104(1) prescribes that local liquor control commissioners “shall act...in collaboration with...control commissioners” in seeing that the laws relating to intoxicating liquor and the sale of malt and vinous beverages are enforced, they have a duty to ensure that those receiving liquor licenses are qualified to hold them. On that basis it would seem that the local liquor control commissioners could deny a liquor license, so long as there was sufficient evidence to support their decision. The local liquor control commissioners may also suspend a license they have granted, after notification and a hearing, if the licensee conducts the business in violation of rules and regulations of the Liquor Control Board, or conditions issued as part of the license being granted. 7 V.S.A. §§ 167, 236. Note that 7 V.S.A. § 167 allows the voters of a municipality to authorize the local liquor control commissioners to condition the issuance of a liquor license upon compliance with any duly-adopted local ordinance regulating entertainment or public nuisances. This enabling authority, if taken advantage of, allows municipalities to carry out and

² “In determining liability on the theory of respondeat superior, it is essential that there be a master-servant relationship, and that the servant is subject to the master's control. See *Minogue v. Rutland Hospital*, 119 Vt. 336, 338-339, 125 A.2d 796 (1956). No such right of control being here present, the Town of Stowe cannot be liable for the acts of the commissioners.” *Verrill v. Dewey*, 130 Vt. 27, 635 (1972).

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help ensure enforcement of their own regulatory interests at least as they pertain to the potential negative impacts emanating from the issuance of liquor licenses.

A similar approach could also be used in regard to inns, hotels or restaurants, under the authority granted in 9 V.S.A. § 3061. That statute allows municipal legislative bodies to require a license to operate an inn, hotel, restaurant, or other place serving food or drink and to revoke the same upon a determination that the public good demands it. “The selectmen may license for one year, or a less time, suitable persons to keep restaurants, or other places dispensing food or drink to the public, and inns or hotels in their respective towns, and may revoke such licenses granted by them or by their predecessors when the public good requires it. This subsection shall not apply to homes catering to tourists, tearooms or tourist camps.” 9 V.S.A. § 3061(a). What the “public good” requires will likely be left to the discretion of the municipal legislative body to determine. Assuming that a similar standard of review would apply here as in other contexts, a court is likely to uphold a municipal legislative body’s exercise of discretionary decision making so long as it was not exercised in an arbitrary and discriminatory fashion. A recent Vermont Supreme Court case analyzed the relatively same standard governing the decisions of municipal legislative bodies to maintain Class 4 highways: “the public good and convenience of the inhabitants of the Town.” See e.g. *Demarest v. Town of Underhill*, 2016 VT 10, analyzing a town’s exercise of discretion in regard to the maintenance of its class 4 highway. “Both appellees and the Commissioners are bound to respect the Town’s discretion, and cannot ‘trump the selectboard’s decision through their own view of what the public requires.’” *Demarest v. Town of Underhill*, 2016 VT 10 (internal citations omitted). Although there are no known exercises of authority pursuant to 9 V.S.A. § 167, it could be used by a municipality to regulate or even conceivably prohibit the retail sale of alcoholic beverages in this class of establishments. It must be noted, however, given the more direct means of accomplishing the same regulatory goals, the State’s liquor license system, and the nonexistent case law on its application, the exact limits of this authority remain ill defined.

1. “BYOB” Establishments

Some restaurants, clubs, and other establishments that do not have liquor licenses allow customers to bring their own alcoholic beverages (commonly referred to as “BYOB”). Most Vermont municipalities have chosen not to regulate these establishments. In the context of “bring-your-own,” there is no liquor license required because no liquor is being sold on the premises. It is, in fact, brought to the premises. However, the consumption of alcohol in a public place may warrant regulation, particularly because of alcohol’s association with social ills such as drunken driving, public disorder, and so on. Municipalities looking to regulate BYOB establishments should first look to their authority to craft regulations that promote the general health, safety, and welfare of the town. 24 V.S.A. § 2291(14). More specifically, they may “... regulate, license, or prohibit ... entertainments ... for which money is received.” 24 V.S.A. § 2291(11). Municipalities may view BYOB restaurants, clubs and establishments as an “entertainment” of sorts and may be able to regulate them as such through a nuisance or entertainment ordinance. This approach could range from requiring a license to operate a BYOB establishment conditioned upon compliance with local regulations to the total prohibition of these types of establishments within the municipality.

2. “Dry Towns”

Interestingly, in spite of the above limitations, municipalities do have an option that confers upon them an amount of local control over this issue that they lack over almost any other issue affecting their inhabitants. Title 7, Section 161 gives municipalities the ability to opt out of the State’s alcohol licensing scheme altogether by voting to prohibit the sale of malt and vinous beverages and/or spirits and fortified wines within their jurisdictional limits. The vote on these questions, which can be brought by a valid voter-backed petition or on the initiative of the local legislative body, must occur at a duly-warned special or annual town meeting, and be voted upon by ballot. According to the Vermont Department of Liquor Control’s “2015 Annual Report,” the Towns of Athens, Baltimore, Holland, Maidstone and Weybridge have banned the sale of all alcoholic beverages while the Towns of Addison, Albany, Corinth, Granby, Groton, Lincoln, Marshfield, Monkton, Pomfret, Rupert, Tunbridge, Vershire, Walden, Waterville, Wells, Wolcott,

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and Worcester have opted to ban the sale of all liquor but have not banned the sale of malt beverages. These towns are sometimes referred to as “wet for beer.”

D. Vermont’s Municipal and Regional Planning and Development Act

A simple random sampling of Vermont municipalities’ online zoning bylaws revealed that, of those found, municipalities classified alcohol purveyors into one of two classes: (1) those where alcoholic products were both purchased and consumed on site (including restaurants/bars/taverns/hotels/inns/); and (2) those where alcoholic beverages were purchased but not consumed on site. Of the latter, with the exception of the Town of Stowe which classifies a business that engages in the “fermentation or distillation of alcoholic beverages” as “industry, light,” these uses were only further classified in regard to being a retail business such as a retail establishment/store/ or neighborhood grocery store. Depending on the use classification and the relevant zoning district, these uses were designated as either “prohibited,” “permitted” (“P”); or “permitted subject to conditions” (“CP” or “CUP”).³ Only the Town of Bennington has in place a regulatory ceiling on the sale of alcoholic beverages on a classified use. Specifically, it defines a “neighborhood grocery store” as “[a] retail establishment for the sale of food and convenience items, with limits on total floor area as specified for the district in which it is located. The sale of gasoline and liquor is specifically prohibited, and the sale of tobacco products and/or alcoholic beverages shall not, in combination, comprise greater than 15% of the available floor space or 15% of the stock in trade. . .” Town of Bennington, Vermont Land Use & Development Regulations, page 17 (2006).

The question has been raised whether Vermont municipalities have the authority to restrict alcohol retailers by location, type and density. The State does limit and in some instances entirely prevents municipalities from regulating certain uses of land. These restrictions are principally located in 24 V.S.A. §§ 4412, 4413. The only arguable limitations with respect to limiting alcohol

³ Heather Wooten, Ian McLaughlin, Lisa Chen, Christine Fry, Catherine Mongeon, & Samantha Graff, *Zoning and Licensing To Regulate The Retail Environment And Achieve Public Health Goals*, 5:65, Duke Forum For Law & Social Change. 65, 72 (2013).

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retailers is found in 24 V.S.A. § 4413(a)(1)(B) which limits municipalities from regulating State-owned and operated facilities or institutions with respect to anything other than “location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements.” Moreover, even if municipalities enact these types of permitted regulations they cannot “have the effect of interfering with the intended functional use” of the structure. The restriction in 24 V.S.A. § 44113(a)(1)(B) would have had applicability prior to 1996 when the State owned and operated its own liquor stores, however that year Vermont switched to an agency system by which it contracts with privately owned stores (aka “agency stores”) to sell liquor at the retail level. There are currently 78 agency stores located within convenience or grocery stores around the State⁴ Though in a sense, agents of the State, these stores are not technically “State-owned and operated institutions and facilities” and therefore do not qualify for the protections of 24 V.S.A. § 4413 from municipal zoning bylaws. Consequently, alcohol retailers are, in almost all aspects, potentially subject to any and all land use restrictions that municipalities are otherwise authorized by Title 24, Chapter 117 to apply to all other uses of land not expressly protected by the state. To exercise such restrictions, it would likely be necessary to create a more specific subclass of retailers (“alcohol retailers”) than those found in those existing regulations researched to ensure such zoning bylaws bore a rational relationship to accomplishing their stated purposes and to avoid being struck down as being overly broad or vague.

Unless a municipality votes under 7 V.S.A. § 161 to become a “dry town,” by prohibiting the sale of all alcoholic beverages, it likely cannot designate alcohol retail as a prohibited use in all districts. The rationale for this opinion is twofold. One consideration is that a court is unlikely to permit municipalities to accomplish through zoning, they could otherwise accomplish through a more explicit grant of Legislative authority provided in the form of 7 V.S.A. § 161. Another consideration is that such a tactic could interfere with the State’s alcohol licensing regime and would therefore be implicitly preempted by State law.

⁴ State of Vermont, Department of Liquor Retail website, http://802spirits.com/about_us

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Preemption, whether express or implied, results when a municipal law conflicts with either a State or federal law. Express preemption occurs when a higher law expressly displaces a lower law. Implied or “field” preemption occurs when one law conflicts with a higher law or the higher law is understood to occupy the field of what is being regulated that any lower law would naturally interfere with the achievement of the higher law by invading its regulatory field. Though the regulatory field that is occupied by the State in this instance is alcohol licensing, not the use of land by alcohol retailers, at some point municipal limitation of the number of alcohol retailers through zoning bylaws could be seen as invading this field and thereby interfering with the State’s licensing goals and objectives. The exact number at which this conflict will occur is not known because it has not yet arisen in any reported case and will remain that way until municipal bylaws are challenged in court for being too restrictive.

It should be noted that despite the above concerns, the Town of Fairlee’s zoning ordinance has yet to be challenged even though it effectively bans liquor stores from Town. “Liquor Store – a State franchised retail shop that sells prepackaged alcoholic beverages to consumers, typically in bottles, intended to be consumed off the store's premises; liquor store is not a permitted or conditional use in the Town of Fairlee.” Fairlee Zoning Regulations Amended 10/26/2015. Fortunately for municipalities, when reviewing the legality of zoning bylaws courts “start with the proposition that zoning enactments are entitled to the presumption of validity.” *Galanes v. Town of Brattleboro*, 136 Vt. 235, 240 (1978). Furthermore, “[c]ourts will not interfere with zoning unless it clearly and beyond dispute is unreasonable, irrational, arbitrary or discriminatory.” *Appeal of Highlands Development Co., LLC and Jam Golf, LLC*, Docket No. 194-10-03 Vtec. (internal citations omitted). Any challenge to a duly enacted zoning bylaw therefore would first have to overcome this presumption.

Any land use regulatory tool that is used by a municipality to regulate alcohol retailers (e.g. location, density, number, conditional use, nonconforming use, etc.), should be accompanied by strong supporting language in the municipal plan citing studies evidencing the dangers of alcohol

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consumption and its secondary effects as well as setting forth goals and objectives through the implementation of bylaws for the mitigation of these hazards.

E. Municipal Policies

Vermont law vests local legislative bodies with the ultimate control over all municipally owned lands and buildings. Conventional wisdom is that this authority derives from 24 V.S.A. § 872 which places in their hands all authority that is not statutorily granted to another office. This provision also states that the local legislative body “shall have the general supervision of the affairs of the town.” This general supervisory authority includes the supervision and management of municipal property such as the municipal hall or similar facilities and all municipal lands. *L'Esperance v. Town of Charlotte*, 167 Vt. 162 (1997). Given this authority, legislative bodies have broad discretion in determining whether to make municipal facilities available to use by the general public. Though the public has a right to use public property including municipal buildings, such right is not absolute, and a municipal legislative body has the authority to regulate the use of its property by restricting access to its intended functional use and/or safeguarding the public health, safety, and welfare of the general public. Accordingly, the legislative body typically opens (e.g. the municipal hall) for use by the public while other property is restricted altogether (e.g. the municipal garage). Anecdotally, this seems to be the case in smaller more often in smaller, more rural Vermont municipalities that lack free or commercial meeting/event/indoor gathering space. The Vermont League of Cities and Towns (VLCT) has developed two model facility rental agreements to assist municipalities that choose to make their facilities available for use by the public and to protect them from the usual issues of liability exposure that accompany that decision. Both of the VLCT models retain the municipal legislative body’s discretion as to the use of alcohol at its facilities. The first model permits the serving and consumption of alcohol on premises contingent upon several conditions including compliance with all applicable State laws, the provision of an additional security deposit, proof of liquor liability and comprehensive general liability insurance if a caterer or third party is used, and indemnification of the municipality for any occurrence. The second model prohibits the possession, and consequently by extension, the consumption of all alcoholic products at the

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municipal facility. It states: “[p]ossession of Alcohol is prohibited in the Facility. Renter will not serve or bring alcohol into the Facility nor permit Renter’s guests to serve or bring alcohol into the Facility.” This prohibition also naturally prohibits “BYOB” (Bring Your Own Beverage) at these facilities.

III. Municipal Authority to Regulate Tobacco

A. State Statutes/Municipal Ordinances

Vermont’s Smoke-Free Laws are rated as “green” in policy and practice by the federal Centers for Disease and Control (CDC) according to their 2013 Prevention Status Report (PSR) on Tobacco Use. The PSR examines “the status of public health policies and practices designed to prevent or reduce important health problems.” The CDC’s ranking of “green” means that “(t)he policy or practice is established in accordance with supporting evidence and/or expert recommendations.” Vermont is one of 27 states the CDC considers to have a “comprehensive State smoke-free policy” which is one it defines “as laws that prohibit smoking in all indoor areas of private workplaces, restaurants, and bars, with no exceptions.” This ranking is due in no small measure to Vermont’s Clean Indoor Air Act which prohibits the possession, and therefore the smoking of, lighted tobacco products of any form in most common areas of “enclosed indoor places of public access.” A “place of public access” is “any place of business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which the general public has access or which the general public uses” and includes, among others, restaurants, bars, retail and grocery stores, shopping malls, museums, and theaters, as well as all indoor areas of workplaces. 18 V.S.A. §§ 1421(a), 1742(a)(1). It should be noted that this prohibition extends to all indoor “publicly owned buildings” that are owned, controlled, or supported by municipal funds because the term includes by definition all “indoor places or portions of such places owned, leased, or rented by . . . municipal governments or by agencies supported by appropriation of . . . municipal taxes.” 18 V.S.A. §§ 1741(4), 1742(a)(1). This prohibition naturally covers all municipal offices and buildings including halls regardless of whether they are used for municipal purposes. With certain exceptions (e.g. within 25 feet of

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State-owned buildings and offices, 18 V.S.A. § 1742(a)(4); designated smoke-free areas of State-owned or leased lands, 18 V.S.A. § 1742(a)(3); and school grounds, 16 V.S.A. § 140) the State does not prohibit smoking outdoors (i.e. in open air public places), but it does allow municipalities to do so.

Title 18, Chapter 27 of Vermont law, which is entitled, “Smoking in Public Places” states that “[n]othing in this chapter shall be construed to supersede or in any manner affect a municipal smoking ordinance provided that the provisions of such ordinance are at least as protective of the rights of nonsmokers as the provisions of this chapter.” 18 V.S.A. § 1746. This provision of State law sets a regulatory floor with respect to smoking in public places that must be followed. Municipalities can, in their discretion, build a more (but not less) prohibitive regulatory regime than that which has been set by the State. Some municipalities (e.g. City of Barre, City of Burlington, City of Montpelier, City of Rutland, and City of St. Albans) have done just that, expanding the breadth of the State’s prohibition to extend to certain outdoor areas, principally municipal parks, playgrounds and recreation areas. The reach of this authority varies. For example, ordinances in the Cities of Barre, Rutland, and St. Albans ban the use or possession of tobacco products completely in municipal parks: “Smoking or use of tobacco products shall be prohibited from Public Parks, playgrounds and recreation areas.” The City of Barre Code of Ordinances, Section 11-31(c). The City of Rutland Code of Ordinances states that, “[n]o person in a park shall: Be in possession of lighted tobacco products in any form (or) [p]lace, maintain or chew, within their mouth, smokeless tobacco products.” The City of Rutland Code of Ordinances, Title 34, Section 8003(3)(4). The City of St. Albans’ ordinance reads, “[i]t shall be unlawful to smoke in City Parks.” City of St. Albans, Title 13, Section 392]. The City of Burlington prohibits smoking only within certain defined areas of public parks: “[e]xcept as otherwise provided herein, smoking is prohibited at all city park playgrounds, shelters, beaches, bleachers and athletic fields.” Code of Ordinances of the City of Burlington, Article I, Chapter 17-8A]. The City of Montpelier has enacted an ordinance that retains some discretion as to its application: “[n]o person shall hold or possess any lighted cigar, cigarette, pipe or device containing tobacco or a tobacco product or a tobacco substitute within or upon any park, field or recreational area

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owned by the City which is conspicuously posted with signage prohibiting smoking.” City of Montpelier Code of Ordinances, Article XI, Section 11-1100].

Currently the only means of enforcing the State law prohibiting smoking in enclosed public places is to ask the person to extinguish the lighted tobacco product and if they refuse to ask that person to leave the premises. 18 V.S.A. § 1745. Given the regulatory freedom and flexibility allowed by State law, municipalities such as the City of Burlington and the Town of Williston have also enacted ordinances imposing an enforcement mechanism (e.g. monetary penalties) that are more punitive than those that are provided by State law. These municipalities have done this by reciting State law within the body of their own ordinances and attaching civil penalties for each violation.

Since the mechanism protecting the rights of nonsmokers under 18 V.S.A. § 1746 is the municipal ordinance, a municipal ordinance must recite the statutory authority for enacting legislation at the local level. Title 18, Section 1746 does not itself constitute an explicit delegation of legislative authority; rather it merely describes the hierarchy of the legal relationship between this particular State law and any relevant regulating smoking. Nor is there another statute that specifically gives explicit authority. However, 18 V.S.A. § 1756 does, at least, indicate that such municipal authority exists, for to hold otherwise would render the Legislature’s words meaningless. See e.g. *In re Vill. Assocs. Act 250 Land Use Permit*, 2010 VT 42A, ¶ 9. “We note that in interpreting any statute, our primary goal is to give effect to the legislative intent and that we first look to the plain meaning of the statute.” Assuming such authority exists, it must arise from the general language of 24 V.S.A. § 2291(14) which gives municipalities the power to “define what constitutes a public nuisance, and to provide procedures and take action for its abatement or removal as the public health, safety, or welfare may require.” This line of thinking is certainly in keeping with the leading legal treatise on municipal law which includes “smoke” in its identification of nuisance activities. McQuillin Municipal Corporations states that “[w]hile exact definition of a nuisance is not possible, it may be stated generally that a nuisance is a thing, condition or use of the some continuity as distinguished from a solitary act, which through

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offensive odors, noises, substances, smoke, ashes and soot, dust, gas, fumes . . . works hurt, annoyance, inconvenience or damages to the public or to another, with respect to his or her comfort, health, repose or safety . . .”⁵ The alternative explanation for the municipal authority to enact smoking ordinances is that such authority must be “incident, subordinate or necessary to the exercise” of 18 V.S.A. § 1746.⁶ In either event, it is clear that municipalities have the authority to regulate smoking in public places beyond that which is explicitly provided in State law. The only question is in regard to which statute should be cited in a municipal ordinance for authority to as the source for its authority and such a question can be easily resolved by referencing both 18 V.S.A. § 1746 and 24 V.S.A. § 2291(14). Of course, the statutorily-prescribed process for the ordinance’s adoption and enforcement (including the imposition of a ceiling on civil penalties not to exceed \$800.00 for a violation) detailed in 24 V.S.A. §§ 1971 et seq. must be adhered to.

It seems likely that municipalities could use nuisance authority from 24 V.S.A. § 2291(14) coupled with the seemingly great latitude and deference provided by 18 V.S.A. § 1746, to broaden the prohibitions against the use of tobacco products to the same extent as they may do with alcohol. The two statutes discussed above seem to give municipalities the regulatory opportunity to also prohibit its use in all outdoor public places as well (e.g. all municipal property and buildings including municipal halls and offices, playgrounds, parks and forests, fairgrounds, public highways, sidewalks, bridges, or parking lots; as well as all private property that has been made open to the general public). There are no known instances where this has been done, but there has been an incremental foray to this approach by the City of Burlington with their outdoor prohibition of smoking in the Church Street Marketplace District.

Smoking shall be prohibited outdoors in the Church Street Marketplace District which includes all of Church Street and the properties which have frontage thereon, bounded on the north by the northernmost property line of properties bounded by Church and Pearl Streets, and bounded on

⁵ McQuillin *The Law of Municipal Corporations*, 6A McQuillin Mun. Corp. § 24.58 Generally; What Constitutes Nuisance (3rd ed.) (1997).

⁶ The Vermont Supreme Court has held that municipalities may exercise those powers and functions specifically authorized by the Legislature, as well as those functions that may be fairly and necessarily implied or that are incident or subordinate to those express powers. *Town of Brattleboro v. Nowicki*, 119 Vt. 18, 19-20, 117 A.2d 258, 259-60 (1955).

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the south by the southernmost property lines of properties at the northern corners of the Church and Main Street intersection, and more precisely shown on a plan entitled "Church Street Marketplace District. Code of Ordinances of the City of Burlington, Article I, Chapter 17-8B(c).

As discussed above, State law already prohibits the use of lighted tobacco products in "all enclosed indoor places of public access and publicly owned buildings" 18 V.S.A. § 1742(a)(1).

B. Municipal Governance Charters

There exist three known municipal governance charter provisions that confer upon a municipality the authority to regulate tobacco products: The Town of St. Johnsbury, the Village of Lyndonville, and the Village of Wells River. The charter for the Village of Lyndonville gives the Village the authority to enact laws governing the "construction, establishment, location, use, operation, and the licensing of . . . all places where tobacco, cigars, and cigarettes are sold or disposed of..." The Village of Wells River's charter provides it with the authority to regulate the "construction, location, and use, and the licensing of . . . all places where tobacco, cigars, and cigarettes are sold or disposed of . . ." And the Town of St. Johnsbury's charter enables it to enact ordinances "with respect to the inspection, regulation, licensing, or suppression of . . . all places where tobacco, cigars, and cigarettes are manufactured or sold . . ." The Town of St. Johnsbury's charter appears to be the most expansive in its reach in that it extends not only to tobacco retailers but also to tobacco manufacturers.

C. State/Municipal Licensing Scheme

The role of municipalities in the State's tobacco product retailer licensing scheme is purely non-discretionary and ministerial. Without a municipal governance charter on the subject (of which there are none) State law recognizes no local tobacco retail licensing requirements. It is the Vermont Department of Liquor Control that has exclusive authority to issue a tobacco license or renewal and the Commissioner thereof to whom the tobacco license fee is ultimately paid. In this capacity, municipalities are merely the governmental conduit to which the licensing fee and application for tobacco licensure or renewal is processed. "A person applying for tobacco license

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and a liquor license shall apply to the legislative body of the municipality and shall pay to the Department only the fee required to obtain the liquor license. A person applying for a tobacco license shall submit a fee of \$100.00 to the legislative body of the municipality for each tobacco license or renewal. The municipal clerk shall forward the application to the Department, and the Department shall issue the tobacco license. The tobacco license fee shall be forwarded to the Commissioner for deposit in the Liquor Control Enterprise Fun.” 7 V.S.A. § 1002(d). (Emphasis added).

D. Vermont’s Municipal and Regional Planning and Development Act

In contrast to municipal authority to impose conditions on the sale of all varieties of alcoholic beverages (malt, vinous, spirits, and fortified wines), municipalities have no such authority when it comes to barring tobacco retailers. There is no State statute that allows a municipality to impose conditions on tobacco retailers through their granting of licenses nor may a municipality vote to ban such sales altogether. Municipal regulatory authority over the sale of tobacco products then must necessarily depend on zoning. As with alcohol retailers, municipalities may regulate the location, density, and overall number of tobacco retailers via duly adopted zoning bylaws. There are however questions as to the limitations of such bylaws. Again, as with alcohol, some municipalities do currently restrict the areas where such products may be sold. A simple random sample of Vermont municipalities’ on-line zoning bylaws revealed that, of those found, tobacco retail uses were typically not classified as more specific sub-classes of retail (i.e. “tobacco retailers”), but rather were grouped into broader uses such as “convenience/retail,” or “gas station” which are historically consistent locations where these products are sold. These uses were again most commonly designated as either “prohibited,” “permitted,” (“P”); or “permitted subject to conditions” (“CP” or “CUP”). The only noticeable exception to this standard practice was the aforementioned Town of Bennington bylaw which imposed a limit on the total retail floor area dedicated to the sale of tobacco products and alcoholic beverages. “. . . [t]he sale of tobacco products and/or alcoholic beverages shall not, in combination, comprise greater than 15% of the available floor space or 15% of the stock in trade. . .” Town of Bennington, Vermont Land Use & Development Regulations, page 17 (2006). Municipalities could be more restrictive

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of tobacco retailers than research has shown they are presently. To this end, the Center for Public Health and Tobacco Policy at New England Law, funded by a grant from the Vermont State Department of Health, developed a report addressing the point of sale of tobacco products in Vermont which includes some model zoning bylaw language to limit tobacco retailers.⁷ Though the model ordinance as a whole is inconsistent in parts with particular provisions of Vermont's Municipal and Regional Planning and Development Act [incorrect effective date of enactment; incompatibility with conditional use criteria with statutorily-prescribed conditional use standards specified in 24 V.S.A. § 4414(3), etc.], it does include useful language regarding density and location of tobacco retailers that would seem to be permissible under Vermont law. For example: "A New Tobacco Retailer may be located only within an area zoned for light industrial or industrial use. In addition, no Tobacco Retailer shall be located within [XXXX] feet of the boundary of any residential zone or a parcel occupied by a school." And: "No New Tobacco Retailer may be located within [XXXX] feet of any other Tobacco Retailer, as measured in a straight line from parcel boundary to parcel boundary." While municipalities appear to have the authority to adopt such rational zoning bylaws to accomplish the legitimate governmental purposes as expressed in their town plans, it is important to keep in mind that they will likely still be subject to the same legal constraints regarding retailers of tobacco products as they are in regard to alcohol retailers. Namely, they cannot enact zoning bylaws that have the effect of banning their sale altogether. In this sense, the State completely occupies the tobacco regulatory field and municipalities are arguably preempted from invading it if they undermine the State's tobacco licensing and retail regime.

E. Municipal Policies

Despite the fact that State law prohibits smoking in all public buildings, those municipalities that make their buildings available for use by the general public they may nevertheless incorporate an express prohibition against smoking in their facility use/rental policy along with an accompanying penalty provision that provides for termination of the agreement for noncompliance.

⁷ Micah Berman & Whitney Dodds, Addressing The Point of Sale: Options For Reducing Youth Tobacco Use In Vermont, Center For Public Health And Tobacco Policy at New England Law, Boston. (2012).

IV. Conclusion and Recommendations

Despite being a Dillon's Rule state, Vermont has delegated to municipalities authority that is relatively far-reaching and extends beyond enacting land use regulations regarding the retail sale, possession and consumption of alcohol and lighted tobacco products. In addition to revising their governance charters and using their role in the State licensing system (at least as it concerns the retail sale of alcohol products), a municipality can vote to prohibit the sale of all alcohol within its borders; enact ordinances to prohibit the possession and use of alcohol and lighted tobacco products in any, some or all places of public access, establishments that serve food and drink, and places that provide commercial entertainment; and implement facility use policies regulating or prohibiting their possession and use. In addition, some qualifying municipalities, they may even impose a 1% local options tax upon the sale of alcohol.

Returning to the matter of regulating alcohol and tobacco retailers through zoning bylaws, our opinion is that municipalities do have the authority to enact much more stringent regulations than the seemingly pervasive "prohibited," "permitted," or "conditional use" classifications currently in place. The reasons for this apparent uniform approach are undoubtedly multi-faceted and may include a lack of awareness of the health effects of these products or their authority to combat them through zoning; lack of applicable model or sample bylaw provisions, etc. Also relevant is the tendencies of Vermont's municipalities to do what they have always done in the past and to look no further than the practices of other municipalities even given the present uncertainty of the limits of municipal zoning authority in this context. Municipalities could be more creative and aggressive in their approach than they have been historically.

Supplementing "A Primer On Planning for Prevention" with the information contained herein would certainly help inform municipalities, especially those that have not enacted any zoning bylaws, as to the full range of the regulatory tools at their disposal so that they may take a more comprehensive and complimentary approach to tackling these issues. Just as useful would be the development of specific model bylaw language, consistent with Vermont's Municipal and Regional Planning and Development Act, for use by Vermont's municipalities. If history is any

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indication municipalities do use model language that is made available to them, either out of necessity to come into compliance with updated law or to support furthering their own policy goals and objectives. This was clearly borne out when the Vermont Land Use Education and Training Collaborative created the “Sample Bylaws and Definitions for Saving Clause Compliance” to assist municipalities in complying with the extensive reforms made to Title 24, Chapter 117 ushered in through the passage of Act 115 in 2004.

What municipalities do with this information will ultimately be up to them. They will have to determine to what extent, if any, they utilize these tools. And it will ultimately be up to the courts (as the final arbiters of the law) to determine, especially with respect to more aggressive land use regulations, the absolute limits of municipal authority in this field.

Part II

I. Federal Law Governing Advertising Tobacco and Alcohol Products

A legal analysis of any regulatory authority municipalities have to regulate the advertising of alcohol and tobacco products would be premature without first ascertaining the degree to which the Federal government preempts (effectively prevents) state and by extension local governments from either delegating or exercising authority over the regulation of alcohol and tobacco products. The principle of preemption emanates from Article VI, Paragraph 2 of the U.S. Constitution (the “Supremacy Clause”) which states in relevant part, “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land.” In order to determine to what extent, if any, federal law preempts state action, courts will assume that if the states have traditionally regulated a field, such as public health, that Congress did not intend to foreclose state action without clear evidence to do so. “Because ‘federal law is said to bar state action in [a] fiel[d] of traditional state regulation,’ namely, advertising, we ‘wor[k] on the assumption that the historic police powers of the States [a]re not to be superseded by the Federal Act unless that [is] the clear and manifest purpose of Congress.’” *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 at 541, 542 (2001). The federal government has set forth clear standards for the advertising of both alcohol and tobacco products, which would supersede state police powers in this field.

A. Federal Law Governing Alcohol Advertising

The Federal Alcohol Administration Act (“FAAA”) represents a myriad regulatory regime governing the producers, importers, distributors, wholesalers, and retailers of alcohol products (distilled spirits, wine, and malt beverages) including the imposition of basic permitting and labeling requirements (e.g. the inclusion of government warning labels); restrictions on unfair trade practices (e.g. exclusive outlets, “tied house” relationships, and consignment sales); and regulations on promotional marketing practices. The FAAA is enforced by the Alcohol and Tobacco Tax and Trade Bureau (“TTB”) with concurrent jurisdiction exercised by the Federal Trade Commission (“FTC”); the latter of which oversees consumer protection regulations and

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product advertising. Of particular relevance to this report, the FAAA does render unlawful “any sign or outdoor advertisement or any other printed or graphic matter, any advertisement of distilled spirits, wine, or malt beverages, if such advertisement...” is deceptive to or will mislead the consumer with respect to the product, inconsistent with approved product labels including health-related statements, or is disparaging of a competitor’s product. 27 U.S.C. § 205(f). These specific content-based restrictions do not limit the number of general product advertisements. It is worth noting that in 2008, the trade associations comprising the alcohol industry voluntarily implemented a 70% advertising audience target [the percentage of the U.S. population that was 21 or older as of the most recent U.S. census (2000) at the time]. This standard applies to television, radio, print, and online advertising placements, but not “point of sale” signage; i.e. advertising for products at the place where they are purchased. According to a March 2014 report by the Federal Trade Commission (“FTC”) entitled, “Self-Regulation in the Alcohol Industry” which principally relied upon alcohol industry self-reporting from 2011, “23.71 percent of reported expenditures were devoted to 1. “point of sale: other” and 2. “specialty items... [t]ogether these two subcategories reflect expenditures for branded materials used by retailers engaged in either on-premise or off-premise sales, including temporary and permanent signage, display racks, neon signs, furniture, lighting, mirrors, and glassware, as well as the net cost (deducting payments by consumers) of distributing items such as t-shirts, hats, can openers, printed recipes, key chains, and coupons.”

B. Federal Law Governing Tobacco Advertising

Signed into law in 2009, the Family Smoking Prevention and Tobacco Control Act (“FSPTCA” aka “Tobacco Control Act”) amended the Federal Cigarette Labeling and Advertising Act (“FCLAA”) by, among other things, imposing stronger warning labels, and granting the Food and Drug Administration (“FDA”) limited authority to regulate tobacco products. The Tobacco Control Act also modified the FCLAA’s preemption provision to permit state and local governments to “enact statutes and promulgate regulations, based on smoking and health...imposing specific bans or restrictions on the *time, place, and manner, but not content*, of the advertising or promotion of any cigarettes.” 15 U.S.C. § 1334(c) (emphasis added). Explained another way, “a state or local

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government can enact a regulation on when, where, or how cigarettes are advertised or promoted...however, it cannot enact a regulation affecting what is said in cigarette advertisements.”⁸ A careful read of the FSPTCA discloses that its reach is limited to cigarettes and not other tobacco based products. However smokeless tobacco and cigars were not preempted from state advertising regulation under the original FCLAA. A subsequent “deeming rule” issued by the FDA extends state regulatory authority even further to cover Electronic Nicotine Delivery Systems (“ENDS”) which include e-cigarettes, gels, water pipes, and future tobacco products. In short, the Tobacco Control Act allows for broad regulation of the time, place, and manner of advertising for tobacco-based products.

II. State Law Governing Signs Advertising Alcohol and Tobacco Products Generally (Vermont State Sign Law)

Enacted in 1968 as a means of preserving the bucolic scenery that is so vital to Vermont's image and by extension the tourist dollars so vital to its economy, Vermont’s comprehensive sign law (Title 10, Chapter 21) bans all billboards from its landscape. This so-called “billboard law” interestingly enough does not once use the word “billboard,” but rather prohibits the erection or maintenance of any “*outdoor advertising* visible to the travelling public *except as provided in this chapter.*” 10 V.S.A. § 488 (emphasis added). “Outdoor advertising” is defined under the law as “a sign which advertises, calls attention or directs a person to a business, association, profession, commodity, product, institution, service, entertainment, person, place, thing, or activity of any kind whatsoever, and is visible from a highway or other public right-of-way.” 10 V.S.A. § 481(4). However, not all outdoor advertising is verboten. There are 17 content-based categorical exemptions including official traffic control signs, residential directional signs, and municipal guidance and informational signs listed in 10 V.S.A. § 494 which are outside the reach of the law and therefore permitted without a permit; signs permitted by law; and signs allowed contingent upon receipt of a State license from the State Travel Information Council. “On-premise signs,”

⁸ Todd D. Fraley, JD; Kendall Stagg, JD; Logan Parker JD; & Joel J. Africk, JD, *Tobacco Advertising Restrictions – Risky Policies with Noble Intentions: Lessons Learned from Lorillard v. Reilly and Other Commercial Speech Jurisprudence Affecting State and Local Regulations of Tobacco Advertising*, Respiratory Health Association, Chicago (2014).

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signs which direct "attention to a business, profession, commodity, service, or entertainment carried on, sold, or offered on the same premises," are permitted by the law so long as they comply with specific regulations. 10 V.S.A. §§ 481, 493, 495. "Official business directional signs," defined as "a sign erected and maintained by the state to indicate to the travelling public the route and the distance to public accommodations, commercial services for the travelling public, and points of scenic, historic, cultural, educational and religious interest," are furnished, erected and maintained by the Vermont Agency of Transportation in the manner prescribed by the State Travel Information Council. 10 V.S.A. § 481, 495. For purposes of this report, official business directional signs can advertise for, inter alia, "commercial services for the travelling public" including breweries, wineries, distilleries, alcohol and tobacco retailers but cannot advertise products. On-premise signs may direct attention to a business, service, or "commodities" such as alcohol and tobacco products so long as the service or product is sold or offered on the same premises where the sign is located.

A. Municipal Authority Governing Signs Advertising Alcohol and Tobacco Products Generally (Vermont Municipal Sign Law)

The State's ban on outdoor advertising extends to all places where its placement would be "visible to the travelling public." The reach of the law then necessarily traverses every state highway and passes through every town, city and village in Vermont. State authority in this regard is pervasive however it is not exclusive. The State does not preempt the exercise of municipal authority in this field, instead it sets a regulatory floor upon which municipalities can build their own system so long as it is as strict and does not conflict with the State sign law: "This chapter shall not supersede the provisions of any local ordinances whose requirements are more strict than those of this chapter, and not inconsistent therewith, whether those ordinances were enacted before or after the effective date of this chapter." 10 V.S.A. § 505(a). This particular statute simply explains the relationship between state and municipal regulatory authority governing the same subject matter (i.e. signs). However, it should not be misconstrued as constituting an express or implied grant of regulatory authority from the State to municipalities.

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Vermont is a Dillon's Rule State and as such its municipalities have "only those powers and functions specifically authorized by the legislature, and such additional functions as may be incident, subordinate or necessary to the exercise thereof." *Hunters, Anglers and Trappers Ass'n of Vermont, Inc. v. Winooski Valley*, 2006 VT 82, 181 Vt. 12, 913 A.2d 391. As such, it is necessary to identify a specific statute that delegates authority to municipalities to regulate signage and advertising. That statute can be found in 24 V.S.A. § 2291(7) and it empowers municipalities to regulate or prohibit the erection, size, structure, *contents*, and location of signs, posters, or displays on or above any public highway, sidewalk, lane, or alleyway of the municipality and to regulate the use, size, structure, contents, and location of signs on private buildings or structures." (emphasis added). This statute gives municipalities the power to adopt standalone sign ordinances that are enforceable as either civil violations in the Vermont Judicial Bureau or the Civil Division of Vermont Superior Court, or criminal violations in the Criminal Division of Vermont Superior Court. Most sign ordinances are designated as civil in nature so as to take advantage of the administrative ease and comparatively low cost of the civil enforcement process.

Stand-alone ordinances are not the only regulatory tool for signs at municipalities' disposal. The Vermont Legislature has also granted municipalities the authority to enact sign regulations as part of their municipal bylaws applicable to land development (zoning bylaws). Specifically, Vermont's Municipal and Regional Planning and Development Act, Title 24, Chapter 117 ("Chapter 117") authorizes municipalities to adopt regulatory tools ("bylaws") to regulate land development which, by definition, includes structures within their jurisdictional limits. The term "structure" is intentionally broad and includes "an assembly of materials for occupancy or use, including a building, mobile home or trailer, *sign*, wall, or fence." 24 V.S.A. § 4303(27) (emphasis added). In contrast with the enabling authority for stand-alone sign ordinances in 24 V.S.A. § 2291(7), Chapter 117 is silent as to the regulatory scope of sign bylaws other than to say that they, like all municipal bylaws, must be "in conformance with the municipal plan" and in keeping with the State's planning and development goals. The only other specific mentions of signs in Chapter 117 is found in 24 V.S.A. § 4416 which allows for the imposition of conditions and

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safeguards as to “the size, location, and design of signs” as a condition of site plan review for any use other than one- and two-family dwellings; and 24 V.S.A. § 4449(a)(1) which states that the administrative officer (“ZA”) is excused from providing permit applicants with a copy of the applicable building energy standards if the structure is a sign. Violations of zoning bylaws governing signs are enforced in the Environmental Division of Vermont Superior Court.

As is discussed later in this report, the authority that may actually be exercised by municipalities is narrower than the wording of the above statutes would seem to impart. This is because state statutes may not impede the rights granted by the Constitution, including the right of free speech under the First Amendment.

B. Vermont State Law Governing Alcohol Advertising

The 21st Amendment to the U.S. Constitution repealed the Constitutional ban on the sale of alcohol (prohibition). That Amendment also declared that “[t]he transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.” The phrase “in violation of the laws thereof” has been interpreted by the U.S. Supreme Court as giving States “concurrent jurisdiction” (shared authority) with the federal government over the regulation of alcoholic products. “Section 1 of the Twenty First Amendment repealed that prohibition, and §2 delegated to the several States the power to prohibit commerce in, or the use of, alcoholic beverages. The States’ regulatory power over this segment of commerce is therefore largely “unfettered by the Commerce Clause.” *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 at 514, 515 (1996). Despite this shared regulatory authority, a survey of state laws regulating alcohol advertising by the Johns Hopkins Bloomberg School of Public Health’s Center on Alcohol Marketing and Youth reveals that “states have also largely ignored the public health impact of alcohol advertising and, as this report documents, have taken only minimal steps to address youth exposure to alcohol marketing. Whatever limitations exist within state statutes and laws are further hampered by the lack of enforcement by state agencies.”

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With respect to the issue of advertising specifically, the John Hopkins' report noted that, despite these limitations, Vermont was one of only four states that received a rating of "BP," the report's highest rating indicating that "(a)ll elements of the best practice are present" for limiting outdoor alcohol advertising. This rating however was "without reference to ad content" and seems merely to be an unintended consequence of Vermont's general, non-content based, state-wide ban on billboards (discussed above). Coincidentally, the three other states that received a "BP" rating (Alaska, Hawaii, and Maine) are also the only other states in the Union that have implemented state-wide billboard bans. Regardless of the policy rationale supporting such a ban, its mitigating effects on the reach and impact of advertising (both alcohol and tobacco) cannot be understated. To its credit, the State of Vermont has gone a step further by enacting a content-based ban⁹ of advertising of alcohol products. It is unlawful in Vermont for any person to "display on outside billboards or signs erected on the highway any advertisement of any kind of malt, vinous beverage or spirituous liquor or [to] indicate where the same may be procured." 7 V.S.A. § 666(a). For what alcohol advertising is permissible, the State prohibits any representation that a product has a higher alcoholic content than similar beverages. 7 V.S.A. § 666(c). Not all outdoor advertising of alcoholic beverages is barred; Vermont law permits advertising the sale of malt or vinous beverages by horse draw vehicles. 7 V.S.A. § 666(b).

C. Vermont State Law Governing Tobacco Advertising

The Vermont laws governing tobacco products do not include a companion ban to the State's law on outdoor alcohol advertising; however such a prohibition is likely rendered superfluous by the State's existing content neutral billboard ban coupled with the prohibitions and restrictions imposed by the Master Settlement Agreement ("MSA") of 1998¹⁰. The voluntary parties to this binding agreement were forty-six states (including Vermont), six U.S. jurisdictions ("Settling States"), and the four largest tobacco manufacturers: Philip Morris USA, R.J. Reynolds, Brown & Williamson, and Lorillard ("Original Participating Manufacturers"). As part of the settlement of

⁹ "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert*, 576 U.S. ____ (2015)]

¹⁰ The Smokeless Tobacco Master Settlement Agreement was entered into with the leading manufacturer of smokeless tobacco products with the same State signatories and at the same time and under the same terms as the Master Settlement Agreement.

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claims that were made by the Settling States against the Original Participating Manufacturers for tobacco-related health costs incurred by the States, the Original Participating Manufacturers agreed to make permanent annual monetary payments for the purpose of advancing the public health including tobacco cessation and prevention. In addition, they agreed to several restrictions on tobacco marketing and advertising including: ceasing all youth-targeted marketing, whether direct or indirect; discontinuing the use of cartoons in advertising, promotions, and packaging of tobacco products; limiting tobacco brand name sponsorships; and, of particular interest to this report, eliminating transit advertisements and billboards, except those at retail facilities.

Although the MSA imposes a ban on "Outdoor and Transit Advertising" within each Settling State, there are several large exceptions to the definition of "Outdoor Advertising" that create significant loopholes to the ban. For example, while the MSA prohibits advertising tobacco products on billboards, signs in arenas, stadiums, shopping malls, video game arcades, and outside-facing advertising on the inside of a window, it exempts individual advertisements that are smaller than 14 square feet on the outside of any retail establishment. It also exempts advertising on the property of a retail establishment or on the inside surface of any window of a retail establishment facing outside. Also missing from the MSA is any restriction on outdoor advertising based on the proximity of any tobacco retail establishments to schools, playgrounds or any other location where children are likely to congregate.

Beyond Vermont's statewide content neutral billboard law and the aforementioned agreed upon prohibitions and restrictions in the MSA, Vermont has two principal laws governing the advertising of tobacco products. The first is a commercial speech disclosure provision requiring any tobacco product retailer to post a warning sign, prepared and made available by the State Liquor Control Board, in a conspicuous place on the premises of the retailer stating that the sale of tobacco products, substitutes, and paraphernalia to minors is prohibited. 7 V.S.A. § 1006(a). The second law touches remotely upon point of sale marketing and prohibits the use of self-service displays for tobacco products (defined as "cigarettes, little cigars, roll-you-own tobacco, snuff, cigars, new smokeless tobacco, and other tobacco products" in 32 V.S.A. § 7702) by

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requiring that these products be made inaccessible to customers without direct assistance by salespersons. 7 V.S.A. § 1003(d)(1)(A). This law exempts tobacco product displays in adult-only (18+) establishments; unopened cigarette cartons and unopened multipacks of 10 or more containers of smokeless tobacco displayed in plain view of employees; and cigar and pipe tobacco stored in a humidor on the sales counter in plain view of employees.

III. First Amendment Commercial Free Speech Considerations Surrounding the Regulation of Alcohol and Tobacco Advertising

The ability of the government to regulate or limit advertising depends in part on whether and how that regulation impedes rights that are granted by the U.S. Constitution. The First Amendment to the United States Constitution provides in relevant part that, “Congress shall make no law ... *abridging the freedom of speech.*” U.S. Const. amend. I (emphasis added). Known as the “Free Speech Clause,” these limits on the exercise of Congressional power imposed by the First Amendment extend with equal measure to state and local governments through application of the Fourteenth Amendment. Under First Amendment doctrine, the government “has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972). Not all speech however is created equal. Some speech - “the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting’ words” – is forbidden and falls outside the scope of the protections afforded by the First Amendment. *Chaplinsky v. State of New Hampshire*, 315 U.S. 568, 571-572 (1942), whereas other “core speech” [e.g. political, artistic, economic speech, etc.] is afforded full First Amendment Protection as it has been deemed “integral to the operation of the system of government established by our Constitution.” *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976). Commercial speech, which the U.S. Supreme Court has defined as “expression related solely to the economic interests of the speaker and its audience,” includes such communications as alcohol and tobacco advertisements and promotions. *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U. S. 748, 425 U. S. 762 (1976).

Commercial speech has historically been denied the full First Amendment protections reserved for non-commercial expressions. In fact, at one time, it was not protected at all. It was only

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relatively recently with the U.S. Supreme Court's holding in *Virginia State Board of Pharmacy* that accurate and non-misleading commercial speech was brought into the folds of the First Amendment's protections. Not all First Amendment protections however are created equal either as commercial speech has been subjected to a less rigorous, more deferential standard of judicial review than other types of speech. "[O]ur decisions have recognized the 'common sense' distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech...The Constitution therefore accords a lesser protection to commercial speech than to other constitutionally guaranteed expression." *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 562 and 563 (1980).

Generally speaking, First Amendment free speech doctrine distinguishes regulations on the basis of whether they are content-based or content-neutral. A content-based regulation is one that imposes different standards and requirements on a sign depending on what information is contained on the sign. A content-neutral regulation is one that treats all signs the same, regardless of the information conveyed on the sign. Content-based regulations are subject to the highest standard of review, known as "strict scrutiny," whereas regulations that are neutral with respect to their content are assessed under the lower standard of review known as "intermediate scrutiny." These two standards are employed by courts to guide them in identifying regulations that are hostile to protected speech.

Under the strict scrutiny standard of review, content-based regulations [those that target speech based on its communicative content] are presumed to be unconstitutional unless the government can show that they are narrowly tailored to serve a compelling government interest. In contrast, content-neutral regulations such as restrictions on the time, place or manner of speech, as well as regulations on commercial speech are evaluated under the four-pronged "Central Hudson test," first articulated by the U.S. Supreme Court in *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 566 (1980):

At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

The difference between the two standards of court review is crucial to the viability of government regulation of speech. Whereas strict scrutiny is a virtual death knell for government speech regulation, intermediate scrutiny is far less insurmountable. One law professor highlighted, if not somewhat overstated, the dire doctrinal implications of these two disparate legal reviews this way: “[g]iven that almost all laws fail strict scrutiny and almost all laws pass intermediate scrutiny, the pivotal point in the doctrinal structure is the content analysis.” Leslie Kendrick, *Content Discrimination Revisited*, 98 VA. L. REV. 231, 238 (2012).

A. *Reed v. Town of Gilbert*, 576 U.S. ____ (2015). Analyzing Content Based Restrictions on Free Speech

The application of the Central Hudson test to content-based commercial speech regulations has recently been called into question with the U.S. Supreme Court’s ruling in the case of *Reed v. Town of Gilbert*, 576 U.S. ____ (2015). In *Reed v. Gilbert*, Pastor Clyde Reed of the Good News Community Church challenged the Town of Gilbert, Arizona’s extensive sign ordinance (“code”) as violative of the Free Speech Clause of the First Amendment. The Town’s code prohibited outdoor signs, but exempted some 23 categories of signs (e.g. political, ideological, temporary directional signs, etc.), each with different requirements with respect to their size and the times and locations where they could be placed. The Church, lacking a physical place of worship, held its services in a variety of locations and relied upon the posting of temporary directional signs around town to advertise where church services were being held each week. The signs, roughly 15 to 20 in number, were placed mostly in the public right-of-way Saturday mornings and removed Sunday afternoons. This practice violated the Town’s sign code’s restrictions on “Temporary Directional Signs Related to a Qualifying Event” which limited the number of such

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signs to four to a property, their size to no greater than six square feet in size, and their duration to no earlier than 12 hours before and no later than 1 hour after a church service or other qualifying event.

That the Court found the Town's sign code to be unconstitutional was not surprising in the least as evidenced by the Court's unanimous holding and Justice Kagan's concurrence that in failing to provide "any sensible basis for these and other distinctions" the code failed to even pass the "laugh test." What *was* noteworthy about the case was that a majority of the Court found the code to be a content-based regulation of speech warranting application of the strict scrutiny standard of review instead of the more forgiving intermediate standard of review typically reserved for time, place or manner regulations on speech. In holding that the code was content based and thus deserving of strict scrutiny review, Justice Thomas, writing for the Court, reasoned that "[g]overnment regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." The regulations in this case defined the categories of signs based on their messages – political signs are designed to influence the outcome of an election; ideological signs are designed to communicate a non-commercial idea or message – and subjected each category to different regulatory restrictions. "The Town's Sign Code ... singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter." Signifying a pronounced doctrinal shift in free speech content analysis, Justice Thomas's analysis dismissed as unnecessary the relevance of ascertaining any impermissible legislative motive or governmental animus targeted towards the ideas contained in the speech being regulated if the regulation is content-based on its face. "Government regulation of speech is content based if a law applies to a particular speech because of the topic discussed or the idea or message expressed...This commonsense meaning of the phrase 'content based' requires a court to consider whether a regulation of speech 'on its face' draws distinctions on the message a speaker conveys...distinctions drawn on the message a speaker conveys...are subject to strict scrutiny." Even facially content-neutral regulations of speech will now be considered content-based regulations and subject to strict scrutiny if they cannot be "justified without reference to the content of the regulated speech" or the

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government adopted them “because of disagreement with the message [the speech] conveys.” Applying the more demanding of the two standards of review (i.e. strict scrutiny) the Court found the sign code to be unconstitutional because the Town could not prove that its regulations furthered a compelling government interest and was narrowly tailored to bring about that interest.

The resolution of this case on these grounds and its potential deregulatory ramifications has cast doubt and uncertainty on the legality and scope of sign codes at all levels of government, including municipal -- a point that was not lost on the concurring Justices who joined with the Court’s judgment but not with the reasoning behind it. Justice Kagan, who was joined by Justices Ginsburg and Breyer in her concurring opinion, wrote that “[c]ountless cities and towns across America have adopted ordinances regulating the posting of signs, while exempting certain categories of signs based on their subject matter.” The Court’s reasoning, she feared, puts many of those sign ordinances “in jeopardy.” Justice Alito’s concurring opinion, joined by Justices Kennedy and Sotomayor, was equally cognizant of, but less dour in, his assessment of the impact of the Court’s ruling on the ability of municipalities to enact reasonable sign regulations. Alito catalogued ten examples of non-content based sign rules to demonstrate that the Court hadn’t rendered municipalities completely “powerless.” These rules included “regulating the size of signs...the location in which signs may be placed; rules distinguishing between: lighted and unlighted signs; signs with fixed messages and electronic signs with messages that change; the placement of signs on private and public property; the placement of signs on commercial and residential property; between on-premises and off-premises signs; restricting the total number of signs allowed per mile of roadway; imposing time restrictions on signs advertising a one-time event; [and] government entities may also erect their own signs consistent with the principles that allow governmental speech.” Justice Breyer’s concurring opinion largely echoed Justice Kagan’s sentiments in objecting to the simplistic rigidity of the Court’s overly broad approach of using content discrimination to automatically trigger strict scrutiny in all instances. The reason being that “[r]egulatory programs almost always require content discrimination. And to hold that such content discrimination triggers strict scrutiny is to write a recipe for judicial management or

ordinary government regulatory activity.” For both these Justices, a more tailored and flexible approach is necessary to balance preserving the intent behind the First Amendment (preserving a free marketplace of ideas and individual expression) against the importance of government regulatory objectives. Strict scrutiny should not then be applied in a wooden fashion, but only employed when there is any “realistic possibility that official [government] suppression of ideas is afoot.”

B. The Probable After-Effects of *Reed*

In total six out of the Court’s eight Justices either filed or joined concurring opinions in the *Reed* case, indicating agreement with the Court’s decision, but not with its reasoning. The implication behind these numbers is, as one law review journal note explained, that those six Justices “are open to finding reasonable sign regulations to be content neutral, even if the reasoning of the *Reed* majority opinion might suggest otherwise.”¹¹ Whatever the impact of *Reed* on First Amendment free speech doctrine - - whether it be Justice Thomas’s new broad content based standard of applying strict scrutiny review whenever any government regulation is challenged; the possibility of still finding some regulations content-neutral on their face; or a “watering down” of the Court’s strict scrutiny standard and its accompanying implications on comprehensive municipal sign codes - - it may have little if any consequences for commercial speech regulations such as those geared towards alcohol and tobacco advertisements. A recent Harvard Law Review Note highlights two principle reasons supporting this hopeful outlook:

First, the Supreme Court has already told us that regulations of commercial speech are content based but are categorically deserving of weakened scrutiny, so *Reed*’s new test for whether a regulation is content based is not relevant.

Second, *Reed* itself provides no indication that it intended to upset this area of settled doctrine. *Reed* never considered regulations of commercial speech explicitly, as the challenged categories in the Town of Gilbert’s Sign Code involved noncommercial expression, nor did it address Central Hudson or the Court’s other commercial speech precedents. Lower courts can take the Supreme Court at its word (or rather, its silence) by...continuing to evaluate

¹¹ *Free Speech Doctrine After Reed v. Town of Gilbert*, 129 Harv. L. Rev. (2016).

challenges to regulations of commercial speech under intermediate scrutiny.¹²

In fact, a cursory review of lower court [federal district courts and courts of appeals] decisions from around the country rendered in the aftermath of the *Reed* decision reveals that the courts have largely done as the law review article predicted. They have resisted calls to extend the narrow holding in *Reed* to other than noncommercial speech. “*Reed* is inapplicable to the present case, for several reasons, including that it does not concern commercial speech. Restrictions on commercial speech are evaluated under *Central Hudson*, using a four-part test...”¹³ “The Supreme Court has clearly made a distinction between commercial speech and noncommercial speech, and nothing in its recent opinions, including *Reed*, even comes close to suggesting that that well-established distinction is no longer valid.”¹⁴ In a case with facts most similar to those in *Reed* (a challenge to a municipal sign regulation), the U.S. District Court for the Central District of California applied the intermediate level of scrutiny because it found *Reed*’s holding to be completely inapplicable. “*Reed* is most notable for what it is not about, and what it does not say...*Reed* does not concern commercial speech, let alone bans on off-site billboards. The fact that *Reed* has no bearing on this case is abundantly clear from the fact that *Reed* does not even cite *Central Hudson*, let alone apply it.”¹⁵ In so rejecting *Reed*, lower courts have continued to uphold the commercial speech doctrine forged by *Central Hudson* and cemented with its progeny by applying intermediate scrutiny.

Of more immediate bearing to the State of Vermont and hence this report than any discernable national trend amongst lower federal courts would be the position of the appellate court for our jurisdiction, the Second Circuit Court of Appeals. Unfortunately, the Second Circuit has not had occasion to address *Reed*’s impact, or lack thereof, on commercial speech regulation. The one opportunity it did have was presented on appeal from the U.S. District Court for the District of Vermont in the form of the case of *Grocery Manufacturers Association, et al. v. Sorrell*, Case No. 5:14-cv-117 (2015). The *Grocery Manufacturers* case involved an industry challenge to Vermont’s GMO labeling law, Act 120. Even though the case dealt with a government required disclosure

¹² *Id.* at 1991.

¹³ *S.F. Apartment Ass’n v. City & County of San Francisco*, No. 15-cv-01545-PJH, 2015 WL 6747489. At 6-7 (N.D. Cal. Nov. 5, 2015).

¹⁴ *CTIA-The Wireless Ass’n v. City of Berkeley*, No. C-15-2529 EMC, 2015 WL 5569072, at 10 (N.D. Cal. Sept. 21, 2015).

¹⁵ *Cal. Outdoor Equity Partners v. City of Corona*, No. CV 15-03172 MMM (AGRx), 2015 WL 4163346, at 10 (C.D. Cal. July 9, 2015).

and not a prohibition on commercial speech, the plaintiff did raise the specter of *Reed* in its brief to the Second Circuit. Lamentably for purposes of this report, before the Second Circuit could issue its decision, President Obama signed bill S. 764 imposing a federal standard for disclosure of foods made with genetically modified organisms that effectively preempted Vermont's law and rendered the Second Circuit's *Grocery Manufacturers'* case moot. The lack of case law from the Second Circuit means that Vermont municipalities are left with a greater degree of uncertainty as to *Reed's* impact on commercial free speech doctrine than municipalities in the other jurisdictions quoted above at least in the intervening time until the U.S. Supreme Court takes the question up squarely on point.

Assuming then that *Reed* does not concern commercial speech and assuming further that any municipal regulation of tobacco and alcohol advertising otherwise clears the first hurdle of federal and state preemption [i.e. is compliant with federal and state law] such regulations would still need to be able to survive a claim that they don't violate the First Amendment's protection of commercial speech. The best gauge at the moment for the predicting the outcome of the later are the U.S. Supreme Court cases prior to *Reed* with the most analogous fact patterns.

IV. *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980) and Intermediate Scrutiny of Commercial Speech

Despite the fact that government regulation of commercial speech is technically "content-based" (restriction on speech based on the topic discussed or message expressed), it has traditionally only merited the lower court review standard of court review known as "intermediate scrutiny." Originally, the Court's justification for the use of this lower standard of review was that due to the commercial speech, due to the accuracy and profit motive elemental to its message, was more readily verifiable than other kinds of noncommercial speech and hence more durable in the face of government regulation. "Attributes such as these, the greater objectivity and hardiness of commercial speech, may make it less necessary to tolerate inaccurate statements for fear of silencing the speaker."¹⁶ In later cases, the Court said that that the real reason was that "[i]t is the State's interest in protecting consumers from 'commercial harms' that provides 'the typical reason why commercial speech can be subject to greater governmental regulation than noncommercial speech.'"¹⁷ Whatever the rationale, it was in the case of *Central Hudson Gas & Electric Corp. v. Public Service Commission*, the U.S Supreme Court developed a four-step test [i.e.

¹⁶ *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.* 425 U. S. 748, at 771, n. 24. (1976)

¹⁷ *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 at 502 (1996) (quoting *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 426 (1993)).

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the *Central Hudson* test] to evaluate whether the State of New York's promotional ban on utility services was an met this standard or constituted an unconstitutional suppression of commercial speech. This four-step intermediate scrutiny test would become the standard for regulating commercial speech.

At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, [1] it at least must concern lawful activity and not be misleading. Next, [2] we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine [3] whether the regulation directly advances the governmental interest asserted, and [4] whether it is not more extensive than is necessary to serve that interest.¹⁸

In order for commercial speech to be afforded the protections of the First Amendment, the communication cannot concern an illegal activity or be misleading. The interests served by this first criterion are those of businesses to convey truthful information about their products and services to consumers and of consumers to receive these communications. If the speech concerns an unlawful activity or is misleading it is not entitled to First Amendment protection and can be regulated. Next, the government must show that it has a substantial interest that is going to be served by restricting the speech. This second criterion recognizes that restrictions on speech are permissible only if they are carefully designed to advance the government's goal. "The State cannot regulate speech that poses no danger to the asserted state interest..."¹⁹ In this manner, even though the Court refers to the *Central Hudson* test as a four-pronged test, in actuality it's really only two when one considers that criterions three (does the regulation "directly advance the government interest asserted") and four (is the regulation "not more extensive than is necessary to serve that interest") are really just sub-considerations of the second prong in that they help inform how well the state interest is going to be served by the restriction. "Compliance with this requirement may be measured by two criteria. First, the restriction must directly advance the state interest involved; the regulation may not be sustained if it provides

¹⁸ *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 at 566 (1980).

¹⁹ *Id.* at 565.

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only ineffective or remote support for the government's purpose. Second, if the governmental interest could be served as well by a more limited restriction on commercial speech, the excessive restrictions cannot survive.”²⁰

Satisfying the third prong of the test -- which is known as the “direct advancement prong” -- requires more than just a tenuous correlation between the restriction on speech and the goal it purports to serve; the government must actually be able to draw a direct line linking the two. As the Court has noted, this exercise cannot rely upon “mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.”²¹

The final prong of the test, whether the restriction on speech is not more extensive than necessary to serve the government interest advanced, requires the restriction on speech to be “narrowly tailored to achieve the desired objective.”²² The fit between the means and ends need not be perfect, so long as it is reasonable. On the other hand, “reasonable” does mean that if the government interest could be achieved by some alternative means without having to restrict speech then the government would not be able to pass the final prong of the test. “If the First Amendment means anything, it means that regulating speech must be a last-not first-resort.”²³

In order to pass First Amendment commercial speech constitutional muster, all four prongs of the *Central Hudson* test must be satisfied. As will be shown in the cases below, it is the third and fourth prong of the test, that prove the most burdensome.

A. *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001) and the Application of Intermediate Scrutiny to Tobacco Advertising Regulations

²⁰ Id. at 564.

²¹ *Edenfield v. Fane*, 507 U.S. 761, ---(1993).

²² *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001) (quoting *Florida Bar v. Went For It, Inc.*, 515 U.S. 618 at 632 (1995)).

²³ *Thompson v. Western States Medical Center*, 535 U.S. 357 at 373 (2002).

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The case of *Lorillard Tobacco Co., v. Reilly*, 533 U.S. 525 (2001) involved a challenge by various manufacturers and retailers of cigarettes, smokeless tobacco and cigars to regulations on tobacco advertising and retail sales practices promulgated by the Attorney General of Massachusetts. The plaintiffs in the case asserted that the regulations violated the Federal Cigarette Labelling and Advertising Act and the First Amendment to the U.S. Constitution. The stated purpose behind the Attorney General's regulations was to "address the incidence of cigarette smoking and smokeless tobacco use by children under legal age."²⁴ The regulations on tobacco [cigarettes, cigars or smokeless tobacco products] put in place by Massachusetts' Attorney General could be divided into two subject areas: retail outlet sales practices and advertising. The regulations governing retail sales practices prohibited tobacco sampling and promotional giveaways; the use of self-service tobacco displays; and making tobacco products accessible to customers without assistance from store personnel. The regulations on tobacco advertising placed restrictions on both outdoor advertising and "point-of-sale" advertising (advertising at retail stores where tobacco products are sold). The outdoor advertising section barred the use of any tobacco advertising within a retail establishment that is directed toward or visible from the outside of any retail establishment that occurs within a 1,000 foot radius of any playground, public park, or elementary or secondary school. The "point-of-sale" regulations prohibited the placement of a tobacco advertisement at a point lower than five feet from the floor within any retail establishment if that establishment is located within this 1,000 foot radius and is not an adult only establishment.

Before delving into how the *Lorillard* court applied *Central Hudson's* intermediate scrutiny standard of review to Massachusetts tobacco advertising law, it must be noted that this case predated the Family Smoking Prevention and Tobacco Control Act's (FSPTCA) modification of the preemption provisions of the Federal Cigarette Labelling and Advertising Act (FCLAA). Because the FCLAA at the time had preempted most regulations related to cigarette advertising, the *Lorillard* Court's First Amendment analysis was restricted to smokeless tobacco and cigar advertisements. As a reminder, the FCLAA, as amended by the FSPTCA now expressly provides that, "a State or locality may enact statutes and promulgate regulations, based on smoking and health...imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes." Keeping that in mind, there is little question that if

²⁴ *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 at 533 (2001).

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Massachusetts cigarette regulations in the *Lorillard* case had not already been preempted by the FCLAA that they would have certainly met the same fate under a First Amendment analysis as did its regulations governing smokeless tobacco and cigars.

The first two prongs of the *Central Hudson* test -- that the commercial speech at issue concerns lawful activity and is not misleading; and that the asserted governmental interest is substantial -- were not at issue in the *Lorillard* case because the Attorney General assumed that the speech was entitled to First Amendment protection and the challenging parties conceded the State's interest in preventing tobacco use by minors. The Justices in the *Lorillard* case therefore focused only on the third and fourth prongs of the *Central Hudson* test -- whether the regulation directly advanced the governmental interest asserted; and whether the restriction on speech was not more extensive than necessary to serve that interest. These prongs were applied first to the advertising regulations (outdoor and point-of-sale) and then to the restrictions on retail sales practices.

The outdoor advertising regulation prohibited tobacco advertising within a 1,000-foot radius of a park, playground or school. To satisfy *Central Hudson*'s third prong, the State had to demonstrate (not just speculate) that the "harms it recites are real and that its restriction will in fact alleviate them to a material degree."²⁵ In support of this prong, the Attorney General relied upon various scientific studies and government reports including findings by the Food and Drug Administration (FDA) to demonstrate the link that advertising plays in the decision of minors to use tobacco products. Because the State had "provided ample documentation of the problem with underage use of smokeless tobacco and cigars" the Court found that the State's decision to regulate tobacco advertising as a means of reducing tobacco use by minors was based on more than "mere 'speculation and conjecture'" and therefore satisfied *Central Hudson*'s third prong.²⁶

Having satisfied *Central Hudson*'s first three prongs, the State had only to pass the fourth by showing that the means it employed were narrowly tailored to achieve its objectives. The Court determined that the Attorney General did not meet this standard because the State's regulations were too broad, indicating a failure to "carefully calculate[d] the costs and benefits associated with

²⁵ Id. at 555.

²⁶ Id. at 561.

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the burden on speech.”²⁷ The Court provided several illustrative examples of the State’s failure in this regard. For instance, even though the Attorney General disputed the contesting parties’ calculations that its prohibition on advertising within 1,000 feet of playgrounds, parks and schools would effectively prevent tobacco advertising in 87% to 91% of some of Massachusetts’ major metropolitan regions, it did acknowledge that such geographical reach was “substantial.” This substantial reach, the Court projected, would constitute a near complete ban when taken in conjunction with the regulations’ additional prohibition on advertisements inside retail stores visible from the outside. The failure of the Attorney General to take into consideration this impact on commercial speech evidenced to the Court a total lack of tailoring of the regulations. This is not to say that the Court was entirely closed off to the prospect of such an advertising restriction, only that this particular one was too general in its standards and consequently far too broad in its application. The State’s failing was trying to apply one regulatory spatial standard to the geographical retail particularities of each and every community. Instead, “a case specific analysis makes sense, for although a State or locality may have common interests and concerns about underage smoking and the effects of tobacco advertisements, the impact of a restriction on speech will undoubtedly vary from place to place.”²⁸ Furthermore, “tailoring” the regulations necessitates specifically targeting those advertising and promotional practices that studies have identified appeal to youth, while still allowing other practices. For this reason, the Court could not see how the State’s interests would be served by extending its advertising restriction to include oral communications. “Apparently that restriction means that a retailer is unable to answer inquiries about its tobacco products if that communication occurs outdoors.”²⁹ In this regard, the range of communications that was regulated (signs of all sizes, regardless of whether they are located inside or outside, as well as oral communication) was also too broad.

According to the Court it is without question that the State’s interest in preventing tobacco use by minors, was substantial “and even compelling.” But it is also without question, the Court points out, that the sale of tobacco products to adults is a legal activity, and the interests of manufacturers and retailers in conveying truthful information about their products to customers must be respected. If this kind of regulation is to satisfy the fourth prong of the *Central Hudson*

²⁷ Id. at 561.

²⁸ Id. at 563.

²⁹ Id. at 563.

constitutionality test, the burdens on commercial speech must be weighed and there is little question that doing so must be done on a case-by-case, municipality-by-municipality basis so that no more speech is restricted than is necessary to achieve the State's interests. A one-size-fits-all regulatory approach will not be narrowly tailored enough to measure the local impact and accordingly serve the competing interests of those involved.

Having addressed outdoor advertising, the Court turned its attention indoors to the State's point-of-sale advertising restriction which prohibited advertising "placed lower than five feet from the floor of any retail establishment which is located within a one thousand foot radius"³⁰ of any park, playground or school. This regulation failed both *Central Hudson's* third and fourth prongs. It failed the third prong because, as the Court pointed out, "[n]ot all children are less than 5 feet tall, and those who are certainly have the ability to look up..."³¹ For that very common sense reason, the regulation wasn't going to advance the State's interest of limiting youth exposure to tobacco advertising. The Court did not go into detail as to why the regulation failed the fourth prong other than to say that a blanket height restriction was not a reasonable fit with the State's goal, but presumably again the objection lay with the broad based nature of the regulation.

The State's retail sales regulations barred the use of self-service displays and required tobacco products to be accessible only by direct contact with a salesperson. The Court found it unnecessary when analyzing these regulations to determine whether they actually regulated conduct and therefore had no discernable speech interest since, even assuming the challengers had a speech interest in how they displayed their products, the regulations still survived First Amendment scrutiny. The Court came to this conclusion because it found that the State was regulating the placement of tobacco products to prevent access to them by minors not because of the message the product conveyed. Additionally, and again assuming a speech interest was implicated by these regulations, the State's interest here was substantial and the means it employed in achieving them was narrowly tailored with ample channels of communication available for retailers to otherwise communicate with their customers. The "ample channels" enabling retailers to continue to exercise their speech interest (if one exists) in how their products are displayed were presumed by the Court

³⁰ Id. at 566.

³¹ Id. at 566.

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to include the open display of empty tobacco packaging and of actual products accessible only to salespeople. This “presumption” by the Court is somewhat disconcerting because although the question of any speech interests in “power walls” [prominent product displays] or other types of product displays was not directly before the Court in this case, the Court's reference to such displays as alternative means of commercial speech calls into question the constitutionality of regulations restricting product placement.

Returning to the issue of sales practice in *Lorillard*, the Court concluded that they withstood First Amendment scrutiny. “The means chosen by the State are narrowly tailored to prevent access to tobacco products by minors, are unrelated to expression, and leave open alternative avenues for vendors to convey information about products and for would-be customers to inspect products before purchase.”³²

B. 44 *Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996) and Application of Intermediate Scrutiny to Alcohol Advertising Regulations

As was the case with *Lorillard*, the outcome of the *44 Liquormart, Inc. v. Rhode Island* case ultimately hinged on the third and fourth prongs of the *Central Hudson* test, with the same result. In *44 Liquormart*, two licensed liquor retailers challenged as an unconstitutional restriction of commercial free speech a State of Rhode Island law banning the advertisement of retail liquor prices. Justice Stevens, writing for the majority, initially appeared to reject *Central Hudson's* disparate treatment of commercial speech. “The mere fact that messages propose commercial transactions does not in and of itself dictate the constitutional analysis that should apply to decisions to suppress them.”³³ This statement was a foreshadowing of Justice Thomas' subsequent approach in *Reed* where he lumped commercial and noncommercial speech together and analyzed both with a content-based approach. In *44 Liquormart* Justice Stevens seemed inclined to afford truthful, non-misleading commercial speech the full protections of the First Amendment while reserving the less strict *Central Hudson* test for regulations of commercial speech geared towards consumer protection. “However, when a State entirely prohibits the

³² Id. at 570.

³³ *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 at 501 (1996).

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dissemination of truthful, non-misleading commercial messages for reasons unrelated to the preservation of a fair bargaining process, there is far less reason to depart from the rigorous review that the First Amendment generally demands.”³⁴ It should also be noted that Justice Thomas’s concurrence in *44 Liquormart* is consistent with what is presumed to be his rejection of the commercial/noncommercial free speech distinction represented in *Reed*. “I do not see a philosophical or historical basis for asserting that ‘commercial’ speech is of ‘lower value’ than ‘noncommercial’ speech.”³⁵ Mention of this doctrinal tension is made here because those seeking to challenge the constitutionality of municipal commercial speech regulations may argue that such speech gets the full protections of the First Amendment. This argument is bolstered by the implication that Justice Thomas's opinion in *Reed* implicitly incorporated the reasoning of Justice Thomas's concurrence in *44 Liquormart*. There is a further argument that the Justices who joined Thomas in his *Reed* concurrence agreed with this incorporation.

Not even the Court’s most ardent economic liberalist Justice Scalia was willing to throw out the *Central Hudson* test. “Since I do not believe we have before us the wherewithal to declare *Central Hudson* wrong or at least the wherewithal to say what ought to replace it I must resolve this case in accord with our existing jurisprudence...”³⁶ As such, Justice Stevens eventually fell back to applying *Central Hudson* to resolve the *44 Liquormart* case. In what has now largely become a perfunctory exercise, the *44 Liquormart* Court readily conceded (as they were supported by the comprehensive studies presented) the first two prongs of *Central Hudson* by holding (1) that the commercial speech being regulated (the advertising of liquor prices) was a lawful activity and not misleading; and (2) that the State of Rhode Island’s interest (“temperance”) was substantial. In fact, the Court seemed little concerned with the validity and importance of the State's interest. “Although there is some confusion as to what Rhode Island means by temperance, we assume that the State asserts an interest in reducing alcohol consumption.”³⁷

³⁴ Id. at 501.

³⁵ Id. at 522.

³⁶ Id. at 518.

³⁷ Id. at 504.

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Shifting its focus to the last two prongs of the *Central Hudson* test, the *44 Liquormart* Court looked at whether the State met its burden of showing that its pricing-advertising ban would “significantly” reduce alcohol consumption. For argument’s sake, the Court accepted as common sense the State’s proposition that prohibiting liquor retailers from advertising their prices would likely result in higher prices. However, it rejected as “speculation or conjecture” the conclusion that the State’s practice of suppressing this truthful and non-misleading information would directly advance its asserted interest of reducing alcohol consumption. Portraying any significant causal decrease in market wide alcohol consumption as a result of its prohibition as “purely fortuitous,” the Court concluded that “although the record suggests that the price advertising ban may have some impact on the purchasing patterns of temperate drinkers of modest means, the State has presented no evidence to suggest that its abridgement of speech will *significantly* reduce market wide consumption.”³⁸ In fact, the evidence indicated that marginal price increases have only a negligible impact on the purchasing habits of abusive drinkers. Having thus failed to show that its suppression on commercial speech in the form of a price-advertising ban would in fact alleviate the harms of alcohol consumption to a material degree, the State fell short of meeting *Central Hudson’s* third prong.

The State of Rhode Island was equally unsuccessfully in navigating *Central Hudson’s* fourth prong / “reasonable fit” test; it could not prove that its regulation (increasing alcohol prices) was no more extensive than necessary to serve its interest in temperance. The Court reasoned that the State could achieve its goal through alternative means such as raising prices, imposing taxes, or conducting educational campaigns. Any of these alternatives, the Court hypothesized, would be more effective than a ban on advertising pricing and none of which necessitated restricting truthful, non-misleading commercial speech.

In support of this last prong, the State unsuccessfully tried to use the Court’s own judgment against itself by making what the Court characterized as a “greater-includes-the-lesser” argument. In the case of *Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico*, 478 U.S.

³⁸ Id. at 505.

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328 (1986) the Court had used this “greater-includes-the-lesser” reasoning to uphold Puerto Rico’s Games of Chance Act of 1948 banning casino gambling advertising. In enacting that law Puerto Rico stopped short of exercising its greater power of banning casino gambling altogether. The reasoning behind this argument was that it would, “surely be a strange constitutional doctrine which would concede to the legislature the authority to totally ban a product or activity, but deny to the legislature the authority to forbid the stimulation of demand for the product or activity through advertising on behalf of those who would profit from such increased demand.”³⁹ However, the *44 Liquormart* Court refused to apply the “greater-includes-the-lesser” reasoning and in doing so rejected its ruling in *Posadas*. Its grounds for the rejection were that “banning speech may sometimes prove far more intrusive than banning conduct”⁴⁰ since words are not inherently less important to freedom than actions. From a constitutional perspective, the First Amendment elevates speech above conduct and does not allow the government to “deny a benefit to a person on a basis that infringes his constitutionally protected interests-especially his interest in freedom of speech.”⁴¹ The corollary argument for Vermont’s municipalities would be to say that because municipalities can vote to become “dry towns” (prohibit the sale of malt and vinous beverages and/or spirits and fortified wines within the municipal jurisdictional limits) this “greater” authority encompasses the “lesser” authority to restrict the advertising of alcoholic products. Unfortunately, as the Court has shown in *44 Liquormart*, such an argument will not survive First Amendment scrutiny.

V. Conclusion and Recommendations

When promulgating alcohol and tobacco advertising regulations it is as equally important to navigate federal and state law as it is to survive constitutional free speech scrutiny. Taking into consideration the uncertain legacy wrought by the *Reed v. Town of Gilbert* case, the most conservative approach to regulating alcohol and tobacco advertising would be to promulgate content-neutral regulations. This would be easier said than done with respect to all but sign-based regulations since advertising by its very nature is content-based commercial speech. The

³⁹ *Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico*, 478 U.S. 328 at 346 (1986).

⁴⁰ *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 at 511 (1996).

⁴¹ *Id.* at 513.

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alternative is to trust, at least until the Second Circuit Court of Appeals and eventually the U.S. Supreme Court hold otherwise, that commercial speech regulations will continue to be reviewed under the intermediate scrutiny standard applying the four-pronged *Central Hudson* test. There is a growing perception by some legal scholars that we are trending from the “difficult to pass” intermediate scrutiny standard of review toward the “impossible to pass” strict scrutiny standard of review. Despite this perception intermediate scrutiny is still, according to most federal lower courts, the test to be applied in this context and is still surmountable. The irony evident from these competing options is that the constitutional “safe-space” for governments is at either end of the same regulatory continuum. If government commercial speech regulations are going to be broad, then they must be so sufficiently broad that they do not regulate the content of the message being conveyed and are therefore content-neutral. On the other hand, if regulations are going to be so specific that they target particular products such as alcohol and tobacco; those regulations must be so sufficiently specific that they are no more extensive than necessary to serve the interests behind them. To this end, both the *Lorillard* and *44 Liquormart* cases provide a blueprint for crafting a commercial speech advertising regulation that will survive constitutional scrutiny.

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Appendices

Appendix A: Licenses and Permits Related to the Manufacture and Sale of Malt, Vinous, and Spirituous Beverages Issued by Vermont Department of Liquor Control

Licenses Related to the Manufacture and Sale of Malt, Vinous, and Spirituous Beverages Issued by Vermont Department of Liquor Control (September, 2015)								
License Name	Purpose	Who May Apply	Location	Length of License	Fee	Number Allowed Per Year Per Applicant	Requires Pre-Approval of Local Licensing Authority (yes/no)	# of Days Prior to Event Application Must be Received by DLC
First Class	Allows licensee (restaurant) to sell beer and wine only, to the public for consumption on the premises	Individuals, partnerships, corporation, manufacturers and rectifiers	At the manufacturing premises and, for all others, at the location described in the license application	1 year ending April 30th	\$230 (\$115 for town and \$115 for DLC)	No limit	Yes	Not applicable
Second Class	Allows licensee (store) to sell beer and wine only, to the public for consumption off the premises and to export (out of the state) malt or vinous beverages only (provided that the licensee follows the guidelines for importation of malt or vinous beverages into that state)	Individuals, partnerships, corporations, manufacturers and rectifiers	Licensed premise described in the license application	1 year ending April 30th	\$140 (\$70 to town and \$70 to DLC)	No limit	Yes	Not applicable
Second Class for Manufacturers (Malt only)	Allows manufacturer to sell beer in kegs only, to the public for consumption off the premises	Manufacturer of beer	Manufacturer/rectifier's premises only	1 year ending April 30th	\$140 (\$70 to town and \$70 to DLC)	Only for manufacturing premises	Yes	Not applicable

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Licenses Related to the Manufacture and Sale of Malt, Vinous, and Spirituous Beverages Issued by Vermont Department of Liquor Control (Continued)								
License Name	Purpose	Who May Apply	Location	Length of License	Fee	Number Allowed Per Year Per Applicant	Requires Pre-Approval of Local Licensing Authority (yes/no)	# of Days Prior to Event Application Must be Received by DLC
Third Class	Allows holder to sell spirits for consumption on the licensed premise	Individuals, partnerships, corporations, manufacturers and rectifiers	Licensed premise described in the license application	1 year ending April 30th	\$1000 for 1 full year, \$500 for 6 mos. or less	No limit	No	Not applicable
Tobacco	Allows holder to sell tobacco products and paraphernalia	Any business	Licensed premise described in the license application	1 year ending April 30th	Free with second class license, otherwise \$100	No limit	Submitted to town first but approval not required	Not applicable
Fourth Class/ Farmers' Market License	Allows manufacturer or rectifier of vinous, malt and spirituous beverages to taste (2 oz for malt and vinous with a total of 8 oz or 1/4 oz of spirits with a total of 1 oz) and sell beverages produced by the manufacturer by the glass or unopened container. At one 4th-class location, vinous manufacturers may taste and sell products (by the glass or unopened container) of 5 other manufacturers provided they are purchased on invoice and allows vinous manufacturers to sell their products to 5 other manufacturers or rectifiers	Manufacturers or rectifiers of wine, malt or spirits	Manufacturing premises or licensed premise described in the license application (this can apply to an off-site tasting room) or a farmers' market	1 year ending April 30th or length of farmers' market	\$65	10 (all farmers market and 4th class licenses count toward the 10)	No, however copies of the lease/rent agreement or proof of ownership of property or a farmers' market agreement and market regulations are required	Not applicable

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Licenses Related to the Manufacture and Sale of Malt, Vinous, and Spirituous Beverages Issued by Vermont Department of Liquor Control (Continued)								
License Name	Purpose	Who May Apply	Location	Length of License	Fee	Number Allowed Per Year Per Applicant	Requires Pre-Approval of Local Licensing Authority (yes/no)	# of Days Prior to Event Application Must be Received by DLC
Wine Storage License	Allows a person who operates a climate-controlled storage facility to store wine owned by another person	Climate-controlled storage facilities	Licensed premise described in the license application	1 year ending April 30th	\$215 to DLC	No limit	Must be registered with Town Clerk	Not applicable
Direct Ship to Retailer	Allows manufacturer/rectifier to ship (by common carrier) or deliver (by manufacturer's or their employees' vehicles) wine directly to 1st or 2nd class licensees. Limit of 5,000 gallons total or 100 gallons per month per licensee.	Manufacturer or rectifier of wine (licensed in- state or out-of- state)	Not applicable	1 year ending April 30th	\$230 to DLC	Not Applicable	No	Not applicable
Direct Ship to Consumer	Allows manufacturer/rectifier to ship wine or beer to individuals within the state. Limit of 12 cases containing no more than 29 gallons per consumer per calendar year.	Manufacturer or rectifier of wine (licensed in- state or out-of- state)	Not applicable	1 year ending April 30th	\$300 to DLC	Not Applicable	No	Not applicable

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

Licenses Related to the Manufacture and Sale of Malt, Vinous, and Spirituous Beverages Issued by Vermont Department of Liquor Control (Continued)

License Name	Purpose	Who May Apply	Location	Length of License	Fee	Number Allowed Per Year Per Applicant	Requires Pre-Approval of Local Licensing Authority (yes/no)	# of Days Prior to Event Application Must be Received by DLC
Caterer's License	Allows holders of 1st or 1st and 3rd class licenses to cater events	Restaurants or hotels that hold either a 1st or 1st and 3rd class licenses	Premises other than those occupied by 1st, 2nd, or 1st and 3rd class licenses	1 year ending April 30	\$230	No limits set	License does not - specific functions requiring a Request to Cater Form do	See Request to Cater Form
Commercial Catering License	Allows caterers licensed by the health department as commercial caterers (not a restaurant or hotel) to sell malt, vinous or spirits at a catered function (must hold a 1st or 1st and 3rd class license as well)	Those licensed by the Health Dept. as a Commercial Kitchen and having a commercial kitchen in their home or place of business (other than a restaurant, or hotel)	Premises other than those occupied by 1st, 2nd, or 1st and 3rd class licenses	1 year ending April 30	\$200	No limits set	License does not - specific functions requiring a Request to Cater Form do	See Request to Cater Form
Request to Cater Form	Allows those holding caterers' permits to cater specific events	Holders of Caterer's Permits	Premises other than those occupied by 1st, 2nd, or 1st and 3rd class licenses	5 days unless otherwise authorized	\$20	No limits set	Yes	5 (can be shortened, but must be at least 1 day)
Wholesale Dealer	Allows holder to sell and distribute at wholesale malt and vinous beverages to retail dealers	If individually owned, holder must be a U.S. citizen. If corporation, a majority of the directors must be U.S. citizens	Premises described in license application	1 year ending April 30	\$1,140	NA	No	Not applicable

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

Permits Related to the Manufacture and Sale of Malt, Vinous, and Spirituous Beverages Issued by Vermont Department of Liquor Control								
Permit Name	Purpose	Who May Apply	Location Event May Take Place	Length of Permit	Fee	Number Allowed Per Year Per Applicant	Requires Pre-Approval of Local Licensing Authority (yes/no)	# of Days Prior to Event Application Must be Received by DLC
Festival Permit	Allows holder to conduct an event at which malt and/or vinous beverages are sold by the glass to the public	Any person	May not take place inside any other licensed premise	4 consecutive days	\$115	4 per yr	Yes	15 days
Special Event Permit	Allows holder to attend an event open to the public to taste (2 oz for malt and vinous with a total of 8 oz or 1/4 oz of spirits with a total of 1 oz) and sell by glass or unopened bottle spirits, malt or vinous beverages made by holder	Only manufacturers or rectifiers	No specific location	Duration of event or 4 days, whichever is shorter	\$35	104 per yr (each manufacturer can be listed under 1 event permit but each attendance will count toward the total of 104)	Yes	5 days
Educational Sampling Event Permit	Allows holder to conduct an event open to the public (minimum charge of \$5.00 per person entry fee) at which spirits, malt and vinous beverages may be sampled (2 oz per product) for educational purposes	Any person	No specific location	4 consecutive days	\$230	4 per yr	Yes	15 days

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

Permits Continued								
Permit Name	Purpose	Who May Apply	Location Event May Take Place	Length of Permit	Fee	Number Allowed Per Year Per Applicant	Requires Pre-Approval of Local Licensing Authority (yes/no)	# of Days Prior to Event Application Must be Received by DLC
Educational Sampling Event Permit	Allows holder to conduct an event open to the public (minimum charge of \$5.00 per person entry fee) at which spirits, malt and vinous beverages may be sampled (2 oz per product) for educational purposes	Any person	No specific location	4 consecutive days	\$230	4 per yr	Yes	15 days
Art Gallery, Bookstore, Library or Museum Permit	Allows holder to conduct an event open to the public at which malt and vinous beverages can be served.	Art gallery, bookstore, library or museum	On the art gallery, bookstore, library or museum premises only	1 day (6 hour limit)	\$20	No limits set	Yes	5 days
Solicitor's Permit	Allows vendor representatives to solicit orders for and promote sale of beer or wine	Any person who represents a vendor	No specific location - allows for "canvassing or interviewing holders of licenses"	1 year ending April 30	\$65	No limits set	No	Normal processing time

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

Permits Continued								
Permit Name	Purpose	Who May Apply	Location Event May Take Place	Length of Permit	Fee	Number Allowed Per Year Per Applicant	Requires Pre-Approval of Local Licensing Authority (yes/no)	# of Days Prior to Event Application Must be Received by DLC
Wine/Beer Tasting Permits For Second Class	Allows holder to dispense wine or beer for tasting purposes (limit of 6 beverages, 2 oz per beverage, 8 oz. total per customer and no more than 8 customers at one time).	Second class licensee	On the 2nd class licensed premise in a designated area that extends no more than 10 feet from the point of service.	1 day (6 hour limit)	\$25	48 per year or 5 per week if part of a food prep class	No	5 days
-For Manufacturers	Allows holder to dispense wine or beer for tasting purposes (2 oz for malt and vinous with a total of 8 oz)	Only manufacturers or rectifiers	Must take place on the 2nd class licensed premise	1 day (6 hour limit)	\$25	48 per year	No	5 days
-For Dining Cars on Trains	Allows a person that operates a railroad to conduct tastings of Vermont-produced alcoholic beverages in the dining car	A person that operates a railroad	Dining car of rail train	1 day (6 hour limit)	\$20	No limits set	No	5 days

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

Permits Continued								
Permit Name	Purpose	Who May Apply	Location Event May Take Place	Length of Permit	Fee	Number Allowed Per Year Per Applicant	Requires Pre-Approval of Local Licensing Authority (yes/no)	# of Days Prior to Event Application Must be Received by DLC
Promotional Wine/Beer Tasting Permits: For Manufacturers and Wholesalers	Allows manufacturers and wholesale dealers to dispense wine/beer for tasting purposes (2 oz for malt and vinous with a total of 8 oz) to 1st or 2nd class licensee's management and staff provided they are off- duty for the rest of the day	Manufacturers/ rectifiers or holder of wholesale dealer's license	Must take place on the premises of the 1st or 2nd class licensee	No permit required but need to send written notice to DLC	No cost	No limits set	No	5 days
-For Manufacturers only	Allows manufacturer or rectifier of spirits to conduct tastings (1/4 oz of spirits with a total of 1 oz) for management and staff of 3rd class licensee provided they are off-duty for the rest of the day	Manufacturer or rectifier of spirits	Premises of a 3rd class licensee	No permit required but need to send written notice to DLC	No Cost	No limits set	No	5 days

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

Permits Continued								
Permit Name	Purpose	Who May Apply	Location Event May Take Place	Length of Permit	Fee	Number Allowed Per Year Per Applicant	Requires Pre-Approval of Local Licensing Authority (yes/no)	# of Days Prior to Event Application Must be Received by DLC
- For Wholesalers only	Allows wholesalers to invite employees of 1st, 2nd, or 3rd class licensees to taste (2 oz for malt and vinous with a total of 8 oz) on the wholesale premises	Wholesale dealers	Premises of wholesale dealer	Six hours	\$25	No limits set	No	5 days
Spirits Tastings	Allows spirits manufacturers, brokers or their agents to conduct spirits tastings (limit of 4 products, 1/4 oz. per product, 1 oz. total per customer and no more than 8 customers at one time)	Manufacturer or rectifier of spirits, liquor brokers or their agents	In a designated area on the premises of a liquor store	Two consecutive hours	No Cost	30 per year per store	No	15 days
Outside Consumption Permit	Allows outside consumption for 1st, 1st and 3rd, and 4th class licensees including golf courses	1st, or 1st and 3rd class, or 4th class licenses (as long as the 4th class licensee owns or rents the entire premises)	All or part of the designated outside premises of the license holder	Indefinite unless there are changes to the licensee	\$20	Not Applicable	Yes	None specified

Appendix B: Vermont Municipal Statutes Regulating Alcohol and Tobacco

VERMONT MUNICIPAL STATUTES GOVERNING ALCOHOL

**The Vermont Statutes Online
Title 24 : Municipal And County Government
Chapter 061 : Regulatory Provisions; Police Power Of Municipalities
Subchapter 011 : Miscellaneous Regulatory Powers**

24 V.S.A. § 2291. Enumeration of powers

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers: (14) To define what constitutes a public nuisance, and to provide procedures and take action for its abatement or removal as the public health, safety, or welfare may require; (17) To regulate or prohibit possession of open or unsealed containers of alcoholic beverages in public places; (18) To regulate or prohibit consumption of alcoholic beverages in public places.

**The Vermont Statutes Online
Title 7: Alcoholic Beverages
Chapter 7: Municipal Control**

7 V.S.A. § 161. Licenses voted by town; town meetings; warning

(a) Upon petition of not less than five percent of the legal voters of any town, filed with the town clerk in conformance with 24 V.S.A. § 704, the warning of the annual or special meeting shall contain an article providing for a vote upon the following questions:

Shall licenses for the sale of malt and vinous beverages be granted in this town?

Shall spirits and fortified wines be sold in this town?

The vote under such article shall be by ballot in the following form:

Shall licenses for the sale of malt and vinous beverages be granted in this town?

Yes _____ No _____

Shall spirits and fortified wines be sold in this town?

Yes _____ No _____

(b) Licenses and permits for the sale of malt and vinous beverages and spirit and fortified wines shall be issued according to the vote at the annual town meeting held in March 1969 until a town votes otherwise. (Amended 1967, No. 271 (Adj. Sess.), § 1, eff. date, see note set out below; 1977, No. 68, § 1; 2015, No. 51, § A.14, eff. Jan. 1, 2016.)

7 V.S.A. § 162. Report

After any annual town meeting wherein the town votes on the questions set forth in section 161 of this title, the clerk of the town shall report promptly the results of the vote to the liquor control board, upon forms furnished by the board. (Amended 1967, No. 271 (Adj. Sess.), § 2, eff. date, see note set out below.)

7 V.S.A. § 163. Ballots; color

Whenever a petition is filed under section 161 of this title, the town clerk shall, at least two weeks before the annual or special meeting, cause blank ballots for the votes provided for in this title to be printed in any color except yellow, in such manner that each ballot can be easily detached, to the number of not less than one and one-tenth times the number of voters qualified to vote at the last preceding general election, as shown by the checklist. Upon each such ballot shall be endorsed the words: "OFFICIAL BALLOT" followed by the name of the town in which it is to be used and the date of the election. The town clerk is authorized to use regular ballots for the requisite number of sample ballots by adding in type or print on the front thereof, the words: SAMPLE BALLOT. (Amended 1967, No. 271 (Adj. Sess.), § 3, eff. date, see note set out below; 1977, No. 68, § 2; 1979, No. 200 (Adj. Sess.), § 117.)

7 V.S.A. § 164. Duties of ballot clerks and town clerks

The board of civil authority, or the ballot clerks if directed by them, shall have charge of the ballots and perform the duties imposed upon ballot clerks and assisting clerks and be subject to the penalties imposed upon such officials by law. The

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

town clerk shall perform the same duties in respect to such ballots as are imposed upon him by the provisions of law governing general elections, except as otherwise provided.

7 V.S.A. § 165. Hours of opening

The box for the reception of such ballots shall be opened at the hour the meeting is called, and be closed when general voting ceases. (Amended 1977, No. 68, § 3.)

7 V.S.A. § 166. Control commissioners

There shall be control commissioners in each town and city. Such control commissioners shall be the selectboard members in each town and city council in each city. The town and city clerks shall be recording officers and clerks of the commissioners and be paid as hereinafter provided. (Amended 2013, No. 161 (Adj. Sess.), § 72.)

7 V.S.A. § 167. Duties of local control commissioners

(a) The local control commissioners shall administer such rules and regulations, which shall be furnished them by the liquor control board, as shall be necessary to carry out the purposes of this title. Except as provided in subsection (b) of this section, all forms of licenses and permits and applications therefor and all rules and regulations shall be prescribed by the liquor control board, which shall prepare and issue such forms, rules and regulations.

(b) If the municipality so votes at a meeting duly warned for that purpose, the local control commissioners may, in the exercise of their authority under subdivision 222(1) of this title, condition the issuance of licenses and permits upon compliance, during the term of the license or permit, with any ordinance regulating entertainment or public nuisances that has been duly adopted by the municipality; and

(c) The local control commissioners may, in the exercise of their authority under section 236 of this title, suspend or revoke a liquor license or permit for violation of any condition placed upon the issuance of a license or permit under subsection (b) of this section. The local control commissioners shall give reasons for the suspension or revocation in writing and shall also state the duration of any suspension in writing. (Amended 1987, No. 103, § 2; 1997, No. 162 (Adj. Sess.), § 1, eff. April 29, 1998.)

7 V.S.A. § 168. Unorganized places, control commissioners

In an unorganized town or gore the supervisor shall be the control commissioner for the administration of the liquor control laws. He may in his discretion issue and approve the issuance of licenses as he finds the interests of the inhabitants best served. The provisions of sections 161-165, 221 and 224 of this title insofar as they relate to voting shall not apply to unorganized towns and gores. (1959, No. 162, eff. May 6, 1959.)

VERMONT MUNICIPAL STATUTES GOVERNING TOBACCO

The Vermont Statutes Online Title 7: Alcoholic Beverages Chapter 40: Tobacco Products

7 V.S.A. § 1002. License required; application; fee; issuance

(a) No person shall engage in the retail sale of tobacco products, tobacco substitutes, or tobacco paraphernalia or provide a vending machine for their sale in his or her place of business without a tobacco license obtained from the Department of Liquor Control. Tobacco licenses shall expire midnight, April 30, of each year.

(b) The Board shall prepare and issue tobacco license forms and applications. These shall be incorporated into the liquor license forms and applications prepared and issued under this title. The licenses issued under this section shall be entitled "LIQUOR LICENSE," "LIQUOR-TOBACCO LICENSE" or "TOBACCO LICENSE," as applicable. The Board shall also provide simple instructions for licensees designed to assist them in complying with the provisions of this chapter.

(c) Each tobacco license shall be prominently displayed on the premises identified in the license.

(d) A person applying simultaneously for a tobacco license and a liquor license shall apply to the legislative body of the municipality and shall pay to the Department only the fee required to obtain the liquor license. A person applying for a tobacco license shall submit a fee of \$100.00 to the legislative body of the municipality for each tobacco license or renewal. The municipal clerk shall forward the application to the Department, and the Department shall issue the tobacco license. The tobacco license fee shall be forwarded to the Commissioner for deposit in the Liquor Control Enterprise Fund.

(e) A person who sells tobacco products, tobacco substitutes, or tobacco paraphernalia without obtaining a tobacco license in violation of this section shall be guilty of a misdemeanor and fined not more than \$200.00 for the first offense and not more than \$500.00 for each subsequent offense.

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

- (f) No individual under the age of 16 may sell tobacco products, tobacco substitutes, or tobacco paraphernalia.
- (g) No person shall engage in the retail sale of tobacco products in the State unless the person is a licensed wholesale dealer as defined in 32 V.S.A. § 7702 or has purchased the tobacco products from a licensed wholesale dealer. (Added 1991, No. 70, § 2, eff. May 1, 1992; amended 1997, No. 58, § 2; 2007, No. 114 (Adj. Sess.), § 4; 2013, No. 14, § 2; 2013, No. 72, § 28.)

The Vermont Statutes Online Title 18: Health Chapter 37: Smoking In Public Places

18 V.S.A. § 1741. Definitions

As used in this chapter:

- (1) "Tobacco products" shall have the meaning given in 7 V.S.A. § 1001.
- (2) "A place of public access" means any place of business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which the general public has access or which the general public uses. The term includes:
- (A) buildings;
 - (B) offices;
 - (C) means of transportation;
 - (D) common carrier waiting rooms;
 - (E) arcades;
 - (F) restaurants, bars, and cabarets;
 - (G) retail stores;
 - (H) grocery stores;
 - (I) libraries;
 - (J) theaters, concert halls, auditoriums, and arenas;
 - (K) barber shops and hair salons;
 - (L) laundromats;
 - (M) shopping malls;
 - (N) museums and art galleries;
 - (O) sports and fitness facilities;
 - (P) planetariums;
 - (Q) historical sites;
 - (R) common areas of nursing homes and hospitals, including the lobbies, hallways, elevators, restaurants, restrooms, and cafeterias; and
 - (S) buildings or facilities owned or operated by a social, fraternal, or religious club.
- (3) "Hospital" means a place devoted primarily to the maintenance and operation of diagnostic and therapeutic facilities for inpatient medical or surgical care of individuals suffering from illness, disease, injury, or deformity, or for obstetrics.
- (4) "Publicly owned buildings and offices" means enclosed indoor places or portions of such places owned, leased, or rented by State, county, or municipal governments, or by agencies supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, State, county, or municipal taxes. (Added 1993, No. 46, § 2; amended 2005, No. 34, § 1, eff. Sept. 1, 2005; 2013, No. 135 (Adj. Sess.), § 2.)

18 V.S.A. § 1742. Restrictions on smoking in public places

- (a) The possession of lighted tobacco products in any form is prohibited in:
- (1) the common areas of all enclosed indoor places of public access and publicly owned buildings and offices;
 - (2) all enclosed indoor places in lodging establishments used for transient traveling or public vacationing, such as resorts, hotels, and motels, including sleeping quarters and adjoining rooms rented to guests;
 - (3) designated smoke-free areas of property or grounds owned by or leased to the State; and
 - (4) any other area within 25 feet of State-owned buildings and offices, except that to the extent that any portion of the 25-foot zone is not on State property, smoking is prohibited only in that portion of the zone that is on State property unless the owner of the adjoining property chooses to designate his or her property smoke-free.
- (b) The possession of lighted tobacco products in any form is prohibited on the grounds of any hospital or secure residential recovery facility owned or operated by the State, including all enclosed places in the hospital or facility and the surrounding outdoor property.

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(c) Nothing in this section shall be construed to restrict the ability of residents of the Vermont Veterans' Home to use lighted tobacco products in the indoor area of the facility in which smoking is permitted. (Added 1993, No. 46, § 2; amended 2013, No. 135 (Adj. Sess.), § 3.)

18 V.S.A. § 1743. Exceptions

The restrictions in this chapter on possession of lighted tobacco products do not apply to areas not commonly open to the public of owner-operated businesses with no employees. (Added 1993, No. 46, § 2; amended 2005, No. 34, § 2, eff. Sept. 1, 2005; 2009, No. 32, § 3.)

18 V.S.A. § 1745. Enforcement

A proprietor, or the agent or employee of a proprietor, who observes a person in possession of lighted tobacco products in apparent violation of this chapter shall ask the person to extinguish all lighted tobacco products. If the person persists in the possession of lighted tobacco products, the proprietor, agent or employee shall ask the person to leave the premises. (Added 1993, No. 46, § 2.)

18 V.S.A. § 1746. Municipal ordinances

Nothing in this chapter shall be construed to supersede or in any manner affect a municipal smoking ordinance provided that the provisions of such ordinance are at least as protective of the rights of nonsmokers as the provisions of this chapter. (Added 1993, No. 46, § 2.)

The Vermont Statutes Online
Title 24 : Municipal And County Government
Chapter 061 : Regulatory Provisions; Police Power Of Municipalities
Subchapter 011 : Miscellaneous Regulatory Powers

24 V.S.A. § 2291. Enumeration of powers

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers: (14) To define what constitutes a public nuisance, and to provide procedures and take action for its abatement or removal as the public health, safety, or welfare may require.

Appendix C: Sample Municipal Governance Charter Provisions Regulating Alcohol and Tobacco

SAMPLE MUNICIPAL GOVERNANCE CHARTER PROVISIONS REGULATING ALCOHOL

**The Vermont Statutes Online
Title 24APPENDIX: Municipal Charters
Chapter 013: City Of South Burlington
Subchapter 015: Taxation**

§ 13-1506. Sales, rooms, meals, and alcoholic beverages tax

(a) The City Council may impose a tax on those transactions in the City involving sales, rooms, meals, and alcoholic beverages which are subject to taxation by the State of Vermont. The authority of the City Council to impose a tax on these transactions was approved by the voters on November 7, 2006. Imposition of any tax by the City Council under this section shall be at the rate or rates specified in 24 V.S.A. § 138, and shall be imposed in accordance with the requirements of 24 V.S.A. § 138(a)(2), (c), and (d).

(b) The City Council shall impose a tax authorized by this section by adopting an ordinance in the manner provided by sections 106-109 of this chapter.

(c) Sales tax revenue received by the City shall be used to reduce the municipal property tax collected on the City grand list and shall not be used to increase total City revenues.

(d) Rooms, meals, and alcoholic beverage tax revenues received by the City may, at the sole discretion of the City Council, be used in any of the following ways:

(1) to deposit in a reserve fund established by the City Council to fund the purchase of land or for construction or reconstruction of City buildings and infrastructure;

(2) to reduce the municipal property tax collected on the City grand list without increasing total City revenues; or

(3) any combination of subdivisions (1) and (2) of this subsection. (Added 2007, No. M-13, § 2; eff. May 8, 2007.)

**The Vermont Statutes Online
Title 24APPENDIX: Municipal Charters
Chapter 019: City Of Winooski**

§ 19-719. Local option tax

(a) If the City Council by a majority vote recommends, the voters of the City may, at an annual or special meeting warned for the purpose, by a majority vote of those present and voting, assess any or all of the following:

(1) a one-percent meals and alcoholic beverages tax;

(2) a one-percent rooms tax;

(3) a one-percent sales tax.

(b) Any local option tax assessed under subsection (a) of this section shall be collected and administered and may be rescinded as provided by the general laws of this State. (Added 2013, No. M-9, § 3, eff. June 4, 2013.)

**The Vermont Statutes Online
Title 24APPENDIX: Municipal Charters**

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

Chapter 113: Town Of Colchester Subchapter 007: Taxation

§ 113-703. Local sales, rooms, and meals and alcohol beverages tax

(a) Upon resolution of the Selectboard, or upon receipt of a petition submitted by five percent of the registered voters of the Town, at an annual or special meeting warned for the purpose by a majority of those present and voting, the voters of the Town may vote to assess any or all of the following:

- (1) a one percent sales tax;
- (2) a one percent rooms tax; and
- (3) a one percent meals and alcoholic beverage tax.

(b) A tax imposed under the authority of this section shall be collected and administered and may be rescinded as provided by the general laws of the State.

(c) Revenues received through the imposition of a tax imposed under this section shall be used for expenses or financing of voter-approved capital projects within the Town and voter-approved intermunicipal financial support related thereto. (Added 2015, No. M-10, § 2, eff. May 26, 2015.)

The Vermont Statutes Online Title 24APPENDIX: Municipal Charters Chapter 127: Town Of Middlebury Subchapter 013: Budget And Taxation

§ 127-1308a. Sales, rooms, meals, and alcoholic beverages tax

(a) The Town of Middlebury may impose a tax on those transactions in the Town involving sales, rooms, meals, or alcoholic beverages which are subject to taxation by the State of Vermont. Imposition of any tax by the Town under this section shall be at the rate or rates specified in 24 V.S.A. § 138 and shall be imposed in accordance with the requirements of 24 V.S.A. § 138(a)(2) and subsections 138(c) and (d).

(b) If the Selectboard of the Town by a majority vote so recommends, the voters of the Town may, at an annual or special meeting warned for the purpose by a majority vote of those present and voting, assess any or all of the following:

- (1) a one percent sales tax;
- (2) a one percent meals and alcoholic beverages tax;
- (3) a one percent rooms tax.

(c) A tax imposed under the authority of this section shall be collected and administered by the Vermont Department of Taxes in accordance with State law governing the State sales tax, meals, and alcoholic beverages tax, or rooms tax.

(d) Of the taxes collected under this section, 70 percent shall be paid on a quarterly basis to the Town after reduction for the costs of administration and collection under subsection (c) of this section. Revenues received by the Town may be expended for municipal services only, and not for education expenditures. Any remaining revenues shall be deposited in the PILOT Special Fund established by 32 V.S.A. § 3709.

The Vermont Statutes Online Title 24APPENDIX: Municipal Charters

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

Chapter 150: Town Of St. Albans

§ 150-3. Local option tax

(a) If the Selectboard of the Town of St. Albans by a majority vote recommends, the voters of the Town may, at an annual or special meeting warned for the purpose, by a majority vote of those present and voting, assess any or all of the following:

(1) a one-percent sales tax;

(2) a one-percent meals and alcoholic beverages tax;

(3) a one-percent rooms tax.

(b) Any local option tax assessed under subsection (a) of this section shall be collected and administered and may be rescinded as provided by the general laws of this State. (Added 2013, No. M-3, § 2, eff. May 14, 2013.)

The Vermont Statutes Online Title 24APPENDIX: Municipal Charters Chapter 156: Town Of Williston

§ 156-18. Local options tax

The Selectboard is authorized to impose a one percent sales tax, a one percent meals and alcoholic beverages tax, and a one percent rooms tax upon sales within the Town which are subject to the State of Vermont tax on sales, meals, alcoholic beverages, and rooms. The Town tax shall be implemented in the event the State local options tax as provided for in 24 V.S.A. § 138 is repealed or the 70-percent allocation to the town is reduced. A tax imposed under the authority of this section shall be collected and administered by the Vermont Department of Taxes in accordance with State law governing the State tax on sales, meals, alcoholic beverages, and rooms. The amount of 70 percent of the taxes collected shall be paid to the Town, and the remaining amount of the taxes collected shall be remitted to the State Treasurer for deposit in the Pilot Special Fund first established in Sec. 89 of No. 60 of the Acts of 1997. The cost of administration and collection of this tax shall be paid 70 percent by the Town and 30 percent by the State from the Pilot Special Fund. The tax to be paid to the Town, less its obligation for the 70 percent of the costs of administration and collection, shall be paid to the Town on a quarterly basis and may be expended by the Town for municipal services only and not for education expenditures. The Town may repeal the local option taxes by Australian ballot vote. (Added 2007, No. M-8, § 7, eff. April 17, 2007.)

SAMPLE MUNICIPAL GOVERNANCE CHARTER PROVISIONS REGULATING TOBACCO

The Vermont Statutes Online Title 24APPENDIX: Municipal Charters Chapter 151: Town Of St. Johnsbury

§ 151-8. Ordinances and regulations

The selectmen of the Town of St. Johnsbury consistent with the Constitution and laws of the United States and of this State, shall have the power and authority to make, establish, impose, alter, amend, or repeal ordinances and regulations and to enforce the same by fine, penalty, forfeiture, injunction, restraining order, or any proper remedy, with respect to the inspection, regulation, licensing, or suppression of the following affairs, establishments, employments, enterprises, uses, undertakings, and businesses, viz:

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

(1) The sale and measurement of wood, coal, oil, and all other fuels; hay scales; markets dealing in meat, fish, and foodstuffs; slaughterhouses; groceries; restaurants, lunch carts, and other eating establishments; all places where beverages are manufactured, processed, bottled, or sold; manufacturing establishments; saloons; taverns; innkeepers; hotels; motels; rooming houses; junk businesses; advertising billboards; overhanging signs and awnings; billiard rooms; pool rooms; bowling alleys; public halls; dance halls; theaters; moving picture houses; all places where tobacco, cigars, and cigarettes are manufactured or sold; repair shops; brickyards; stone sheds; blacksmith shops; public garages; the transportation, storage, and sale of propane gas, naphtha, gasoline, kerosene, fuel oil, and other inflammable oils; the breeding, raising, and keeping of horses, cattle, swine, poultry, mink, foxes, furbearing, and other domestic animals; coal sheds; wood yards; creameries, dairies; dyeing establishments; garbage plants; gas works; livery stables; skating rinks; sewers; cesspools; privies; cow stables, barns; wells; and public dumps; oil and gasoline storage tanks, and gasoline filling stations.

The Vermont Statutes Online
Title 24APPENDIX: Municipal Charters
Chapter 237: Village Of Lyndonville

§ 237-4. Specific corporate powers

The generality of the preceding section and the grant of the powers therein made, but as a more specific designation of some of the powers conferred upon said Village, the Village of Lyndonville has authority: (g) Subject always to the Constitution and the laws of this State and of the United States and to the limitations of section 3, to enact, adopt, repeal, alter, or amend ordinances, bylaws, and other regulations respecting the following matters within the Village limits:

(g) Subject always to the Constitution and the laws of this State and of the United States and to the limitations of section 3, to enact, adopt, repeal, alter, or amend ordinances, bylaws, and other regulations respecting the following matters within the Village limits:

(2) The construction, establishment, location, use, operation, and the licensing of hay scales; markets dealing in meat, fish, and food stuffs of all kinds; slaughter houses; groceries; restaurants, taverns, cafes, and other eating establishments; inns and hotels; manufacturing establishments; junk businesses; advertising bill boards; overhanging signs, street awnings; lunch carts; billiard and pool rooms; all places where beverages of any kind are sold or disposed of, either at wholesale or retail; public halls, theatres; dance halls; bowling alleys; moving picture houses; all places where tobacco, cigars, and cigarettes are sold or disposed of; blacksmith shops; trucking depots, stands, and other trucking establishments; public garages; repair shops; brick yards; stone sheds; cattle pens; hog pens; hen yards, poultry houses; coal sheds; dairies; laundries; dyeing establishments; garbage plants; gas works; wells, stables, gasoline, and oil storage tanks; gasoline filling stations; cess pools; skating rinks; privies; private drains; sewers; and public dumps.

The Vermont Statutes Online
Title 24APPENDIX: Municipal Charters
Chapter 285: Village Of Wells River

§ 285-4. Specific powers conferred

(a) Without limitation of the generality of section 3 of this charter and the grant of the powers therein made, but as a more specific designation of some of the powers conferred upon the Village, the Village of Wells River has authority:

(7) Subject always to the laws of this State and the limitations of section 3 of this charter, to enact and adopt ordinances, bylaws, and other regulations respecting the following matters within the Village limits:

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

(B) The construction, location, and use, and the licensing of hay scales; markets dealing with meat, fish, and food stuffs; slaughter houses; groceries; restaurants and eating establishments; manufacturing establishments, inns, and hotels; junk businesses; advertising billboards; overhanging signs; awnings; lunch carts; billiard and pool rooms; all places where beverages of any kind are sold or disposed of, either at wholesale or retail; public halls, theatres; dance halls; bowling alleys; moving picture houses; all places where tobacco, cigars, and cigarettes are sold or disposed of; blacksmith shops; trucking depots, stands, and other trucking establishments; public garages; repair shops; brick yards; stone sheds; cattle pens; hog pens; hen coops; coal sheds; dairies; laundries; dyeing establishments; garbage plants; gas works; livery stables, oil and gasoline tanks; gasoline filling stations; private sewers and cesspools; skating rinks; stables; privies; wells; and public dumps.

Appendix D: Sample Municipal Ordinances Regulating Alcohol and Tobacco

SAMPLE MUNICIPAL ORDINANCES REGULATING ALCOHOL

CITY OF BARRE ORDINANCES

CHAPTER 11 -- OFFENSES AND MISCELLANEOUS PROVISIONS

Sec. 11-27. Liquor Control.

(a) AUTHORITY

Under authority granted in 7 V.S.A. Chapters 1-25, and 40; 1 V.S.A. Chapter 9; 11A V.S.A. Chapter 8; 12 V.S.A., Part 10, Chapter 213; 13 V.S.A., Part 1, Chapters 51, 85; 17 V.S.A. Chapter 35; 18 V.S.A., Part 2, Chapter 37; 20 V.S.A. 20, Part 5, Chapter 111; 24 V.S.A., Part 2, Chapter 61, Subchapter 11; V.S.A. 32, Subtitle 2, Part 5, Chapter 239; the City Council of the City of Barre hereby ordains the following civil ordinance regulating liquor.

(b) PURPOSE

The purpose of this section is to preserve the public health, safety, and welfare by regulating the sale and the consumption of alcoholic beverages within the City of Barre. It is the goal of this section to allow alcohol related businesses and the residents of the City to peacefully coexist in a manner which is mutually respectful of the interests and rights of each other. This Ordinance is intended to amend and replace the prior Sec. 11-27 contained within the Official Code of Ordinances and referred to as "Ord. No. 1977-3, 9-6-77, Revised Ord. No. 1989-8, 8-1-89."

(c) DEFINITIONS

As used in this section, the following terms shall be defined as follows, all others as outlined in 7 V.S.A., Chapter 1, Sec 2.

(1) Public Place. A public place shall mean any bridge, culvert, roadway, street, square, fairground, sidewalk, alley, playground, park, or school property or other place that is open temporarily or permanently to the public with respect to general circulation of motor vehicles or pedestrians within the City Of Barre.

(2) Open Beverage Container. A container, bottle, can or vessel containing malt or vinous beverages or spirituous liquors, which is opened.

(3) Minor. A person who has not attained the age of 21.

(4) Under 21/Teen Night. An event held by an establishment holding a First Class Cabaret license for the expressed purpose of entertaining patrons who are under the age of 21 and where no alcoholic beverages are consumed.

(5) Motor Vehicle. "Motor Vehicle" means any vehicle, which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semitrailers, campers, go-carts, snowmobiles, amphibious craft on land, dune buggies, or racing vehicles, and motorcycles.

(6) Licensee. An establishment holding a first class cabaret license approved by the City of Barre Liquor Control Board.

(d) GENERAL PROVISIONS

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

This ordinance is meant to compliment or amplify any applicable state or federal regulations, laws, statues, ordinances or conditions.

(1) Alcohol Consumption or Possession in Public Places

a) Prohibitions. Except as authorized in subsections (b) and (c) hereof:

(i) No person shall have constructive or actual possession of an open beverage container in any public place or in any motor vehicle located in a public place.

(ii) No person shall consume the contents of an open beverage container in any public place or in any motor vehicle in a public place.

b) Notwithstanding subsection (a)(i) and (a)(ii) hereof, it shall not be unlawful to possess an open beverage container or to consume the contents thereof in the Municipal Auditorium and its grounds, the Barre Opera House and its upstairs lobby, Rotary Park Picnic area, or any other city-owned public place when the event where alcoholic beverages will be consumed has been authorized by the City Council with the following restrictions:

(i) The contents of the open beverage container must be consumed between the hours of 7:00 a.m. and 9:00 p.m. daily.

(ii) No possession or consumption occurs on the roadways, sidewalks or parking lots within such city owned areas, as defined within this subsection (b) without specific City Council approval.

(iii) No possession or consumption is of or from glass containers or beer kegs, so called.

c) Notwithstanding subparagraphs (a) and (b) hereof, the City Council may give specific advance approval for possession and consumption from open beverage containers, including beer kegs, within city property up to and after 9:00 p.m. daily.

CODE OF ORDINANCES OF THE CITY OF BURLINGTON, VERMONT ARTICLE I, CHAPTER 21

21-37 Consumption of alcoholic beverages prohibited.

No person shall consume or attempt to consume any intoxicating malt or vinous beverage or intoxicating spirits upon the steps providing access to and egress from the Burlington City Hall.

(Ord. of 10-25-76, § 2; Ord. of 1-9-95)

21-38 Alcohol consumption, possession in public places.

(a) Definitions. As used in this section, the following terms shall be defined as follows:

(1) Open beverage container—A container, bottle, can or vessel containing malt or vinous beverages or spirituous liquors, which is opened.

(2) Public place—A public place shall mean any bridge, culvert, roadway, street, square, fairground, sidewalk, alley, playground, park, or school property or other place open temporarily or permanently to the public or general circulation of vehicles or pedestrians within the City of Burlington.

(b) Prohibitions. Except as authorized in subsections (3) and (4) hereof:

(1) No person shall have constructive or actual possession of an open beverage container in any public place or in any motor vehicle located in a public place.

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

- (2) No person shall consume the contents of an open beverage container in any public place or in any motor vehicle in a public place.
- (3) Notwithstanding subsections (1) to (2) hereof, it shall not be unlawful to possess an open beverage container or to consume the contents thereof in Oakledge, South, Loddy and North Beach Parks, where consumption of alcoholic beverages is allowed, if the following conditions are observed:
- a. The open beverage container is possessed and the contents consumed between the hours of 7:00 a.m. and 9:00 p.m. daily.
 - b. No such possession or consumption occurs on the roadways, sidewalks or parking lots within such parks.
 - c. No such possession or consumption is of or from glass containers or beer kegs, so called.
- (4) Notwithstanding subparagraphs (1), (2) and (3) hereof, the parks and recreation commission may give specific advance approval for possession and consumption from open beverage containers, including beer kegs, within city parks up to and after 9:00 p.m. Possession or consumption from open containers within street space rented to restaurants as outdoor serving areas by the Church Street Marketplace Commission shall not be a violation of this section.
- (c) Possession by a minor:
- (1) It shall be prohibited, under the terms of this subsection, for any minor to purchase, possess, or consume any malt or vinous beverage or spirituous liquor within the City of Burlington. For purposes of this subsection, a minor is any person who has not yet attained the age of twenty-one (21).
 - (2) The odor or presence of malt or vinous beverage or spirituous liquor upon the breath of any minor shall be prima facie evidence of possession for the purposes of this subsection. If a law enforcement officer has reasonable grounds to believe that the minor has consumed any malt or vinous beverage or spirituous liquor, the officer may require the minor to submit to a field evidentiary test.
 - (3) The parents, guardian, or custodian of a minor alleged to be in violation of this subsection shall be notified as soon as reasonably possible of the alleged violation.
 - (4) A person who violates this subsection commits a civil offense which is punishable by a fine of one hundred fifty dollars (\$150.00). At the discretion of the city attorney's office, the fine may be waived upon the successful completion of an approved alcohol and drug screening program.
- (Ord. of 3-12-79; Ord. of 11-15-82; Ord. of 5-20-85; Ord. of 1-9-95; Ord. of 8-9-99; Ord. of 2-5-01)

CODE OF ORDINANCES OF THE CITY OF BURLINGTON, VERMONT ARTICLE I, CHAPTER 27

27-5 Parades and street events.

- (a) Parade defined. A parade is any march, pageant, demonstration or procession of any kind in or upon any street, park or other outside public place in the city, except funeral processions organized by a licensed mortician. Street event defined. A street event is any community function, ceremony, show, exhibition, display or celebration of any kind in or upon any street, park or other public place in the city. A block party that is confined to a city block and involves primarily the residents of that block shall be considered a street event.
- (b) Permit required; grounds for refusal. No person shall engage in, participate in, form or start any parade or street event without a permit issued therefor by the chief of police or his or her designee. No permit shall be granted unless a

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

request for such is made at least forty-eight (48) hours prior to its occurrence. A requested parade or street event permit may be refused by the police chief for any of the following reasons:

- (1) Another public event requiring the presence of police officers has been previously scheduled for the time requested, and in the judgment of the chief of police additional officers could not be assigned to the requested parade or street event without endangering the public safety and welfare; or
 - (2) The parade or street event is requested for a time which would result in severe traffic congestion or interfere with the quiet of a neighborhood during normal sleeping hours. For purposes of this paragraph, the period between 7:00 a.m. and 8:30 a.m. and between 5:00 p.m. and 7:00 p.m. of any one day shall be regarded as periods of severe traffic congestion; and the period between 9:30 p.m. and 7:00 a.m. the following day shall be regarded as normal sleeping hours.
 - (3) A parade, or other event on Church Street between Main and Pearl Streets has previously been scheduled for the time requested and the chief of police determines, after consulting with the administrator of the Church Street Marketplace District, that the two (2) events cannot occur simultaneously without endangering public health, safety and welfare.
 - (4) Those requesting a permit for a block party have not presented a waiver form signed by at least three-quarters (¾) of block residents who thereby waive their right of normal access to the street for the period of the block party.
- (c) Contents of permit; authority to issue for another time. Any permit issued pursuant to this section shall specify the time and place of such parade. If the permit is refused pursuant to this section, it shall be granted for any other requested time which does not violate this section.
- (d) In addition, the following limitations on block parties may be incorporated as conditions of the permit:
- (1) There shall be no more invited guests than the number of block residents in attendance.
 - (2) No alcohol shall be dispensed or consumed on public property.
 - (3) No live bands.
 - (4) Amplified sound to be controlled so as not to carry beyond the property lines of houses adjacent to the block where the party is being held.

(Rev. Ords. 1962, § 4221; 1969 Cum. Supp., §§ 4221, 4222; Ord. of 10-16-72; Ord. of 5-2-83; Ord. of 5-24-93)

CITY OF RUTLAND CODE OF ORDINANCES TITLE 19, CHAPTER 5

Public Consumption of Alcoholic Beverages

Section

- § 3501. State laws applicable
Except as otherwise provided herein, the laws of the State of Vermont and ordinances of the City of Rutland shall be applicable to the sale, possession, consumption, transportation, and use of alcoholic beverages within the City of Rutland.
- § 3502. Short title
This ordinance shall be known as the alcoholic beverage control ordinance of 1987.
- § 3503. Definitions

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. The word "shall" is to be construed as mandatory and not merely director.

(a) "Alcohol" is the product of distillation of any fermented liquor, rectified either once or oftener whatever may be the origin thereof, and includes ethyl alcohol and alcohol which is considered non-potable.

(b) "Malt beverage" is any fermented beverage of any name or description manufactured for sale from malt, wholly or in part, or from any substitute thereof, know as beer, porter, ale and stout, containing not less than one percent nor more than six percent of alcohol by volume at sixty degrees fahrenheit.

(c) "Person" is an individual, partnership, corporation, association, trust, or other institution or entity.

(d) "Possession" is the detention and control, or the manual or physical custody of a container or containers of a beverage for which possession is prohibited under the terms of this ordinance.

(e) "Public place" is a place to which the general public has a right to resort including but without limitation thereto all lands and buildings owned by or leased to the City of Rutland shall include all public streets, highways, bridges and sidewalks within the city. Public place as used herein shall also include private property which is accessible to the public, or is used in connection with or adjacent to mercantile establishments open to the general public.

(f) "Spirits" is any beverage containing alcohol obtained by distillation, fortified wines and liquors and any other beverage containing more than twenty percent of alcohol by volume at sixty degrees fahrenheit.

(g) "Vinous beverage" is all fermented beverages of any name or description manufactured or obtained for sale from the natural sugar contents of fruits, or other agricultural products, containing sugar, the alcoholic content of which is not less than one percent nor more than twenty percent by volume at sixty degrees fahrenheit.

(h) "Open container" is any vessel or device from which an alcoholic beverage may be consumes, poured, or otherwise dispenses. An open container as defined herein, shall not include the container provided by a bottler, distiller, or manufacturer where the seal, sealing device, or closing device provided by such bottler, distiller, or manufacturer has not been broken or removed, provided that no other opening in such container is made by the consumer.

§ 3504. Prohibition

It shall be unlawful for any person to have in his possession any opened container containing any quantity of spirituous liquor, malt, or vinous beverages or any blends, or mixture thereof as defined herein on, under or above any public place whatsoever. Possession shall include possession by any person in a motor vehicle.

§ 3505. Permits

Upon first obtaining a written permit, which may be included within the regular permit granted for use of such property, any publicly recognized organization or organized group, or family group, may be exempted from the provisions of section 3504 of this ordinance for a short period of time only, not to exceed twenty four hours, subject to all other laws and ordinances. Permits may be obtained from the board of control commissioners for all events, upon written request.

§ 3506. Penalty

A person who violates any provision of this ordinance shall be subject to a civil penalty of not less than \$100 nor more than \$500.

§ 3507. Separability

In the event any section, subsection, sentence, clause or phrase of this ordinance shall be adjudicated invalid or unconstitutional, such phrase is declared to be separable and the remaining portions of this ordinance to be in full force and effect.

**SOUTH BURLINGTON ORDINANCE REGARDING LICENSURE AND REGULATION OF CIRCUSES,
CARNIVALS AND OTHER SHOWS**

The Council of the City of South Burlington hereby ordains:

SECTION 1 . Definitions

"Show" as used herein shall mean any circus, carnival, menagerie, street show or itinerant show. "Show" shall also mean any form of live entertainment or performance open to the public such as, but not limited to, concerts, plays, dances with live music or a disc jockey, dance reviews, clowns, magicians, or comedians.

SECTION 2. Regulation of Shows

(a) No show shall be conducted in the City of South Burlington unless a license has been obtained from the City Manager, nor shall any show be conducted in violation of the provisions of this Ordinance.

(b) A license issued under this Ordinance shall be effective on issuance and shall remain in effect until midnight on the next occurring April 30th unless the City Manager provides for expiration on an earlier date. A license which expires on April 30 shall remain in effect beyond April 30 if the holder of the license applies for a new license before April 30 and the application for new license is pending before the City Council on April 30.

(c) Any license issued under this Ordinance may be revoked by the City Council, for just cause, after notice to the license holder and provision of an opportunity for a hearing before the City Council.

SECTION 3. Application for License

(a) An application for a license under the provisions of this Ordinance shall be filed with the City Manager at least twenty-one {21} days before the date set for the opening of the show.

(b) Such application shall include:

(1) The name of the owner and operator.

(2) A site plan indicating: location, and distance from the nearest residences, fire hydrants, state and local highways, overhead electrical' and telephone wires, entrances and exits to shopping centers and other public places.

(3) The intended hours of operation, and the number of days that the show will be conducted.

(4) Description of the show, including a list of each item of proposed exhibit or entertainment.

(5) Any other information required by the City Council or the City Manager.

SECTION 4. Approval Standards

Prior to the issuance of any license under this ordinance, the City Manager shall determine that the proposed show satisfies the following standards:

(a) The proposed show is in conformance with any applicable City ordinances including the South Burlington Land Development Regulations;

(b) The proposed show will not result in undue adverse traffic congestion and unsafe conditions regarding the use of public roads.

(c) The proposed show will not present or create a threat to the safety of persons or property because of fire, explosion or other hazard.

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

- (d) The proposed show will not create unhealthy conditions regarding water supply, sewage disposal or solid waste disposal.
- (e) The proposed show will not interfere with the use of neighboring property for its customary use by the creation of noise, dust, noxious odors, lighting or other activities which extend beyond the boundary of the activity.
- (f) The proposed show will not overburden the public infrastructure of the City. Special attention shall be given to the cumulative impacts of other activities which may be occurring at the same time.
- (g) The proposed show will not have an adverse effect on public health, safety, welfare and convenience of the inhabitants of the City.

SECTION 5. Approval Conditions

When issuing a license under this ordinance, the City Manager may attach such reasonable conditions as the Manager may deem appropriate to mitigate or eliminate any impacts reviewable under the Approval Standards set forth above. Such conditions may include but are not limited to:

- (a) establishing specific hours for the proposed show;
- (b) establishing noise limits;
- (c) requiring the provision of traffic control personnel at no cost to the City;
- (d) requiring the provision of crowd control and medical personnel at no cost to the city;
- (e) requiring the provision of firefighting equipment and personnel at no cost to the city;
- (f) requiring the posting of security bonds or escrow accounts to ensure compliance with applicable ordinances and license conditions;
- (g) requiring that trash and litter on public streets attributable to the proposed activity be collected and removed at no cost to the city;
- (h) restricting or prohibiting the consumption of alcoholic beverages in connection with any regulated activity;
- (i) prohibiting the sale of admission or seating tickets in excess of the established capacity of the event area.

SECTION 6. License Fee

The fee for any license shall be \$25.00 which shall be paid at the time of filing the application.

SECTION 7. Exemptions

Activities conducted by schools licensed by the State Department of Education and/or churches, on school or church grounds, are exempt from the requirement to obtain a license and pay a permit fee.

SECTION 8. Enforcement

Any person who violates a provision of this civil ordinance or who violates any condition of a license issued hereunder shall be subject to a civil penalty of up to \$800 per day for each day that such violation continues. Police Officers of the City of South Burlington shall be authorized to act as Issuing Municipal Officials to issue and pursue before the Judicial Bureau a municipal complaint.

SECTION 9. Waiver Fee

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

An Issuing Municipal Official is authorized to recover a waiver fee, in lieu of a civil penalty, in the following amount, for any person who declines to contest a municipal complaint and pays the waiver fee:

First offense	\$100
Second offense	\$250
Third offense	\$400
Fourth offense	\$550
Fifth and subsequent offenses	\$700

Offenses shall be counted on a calendar year basis.

SECTION 10. Civil Penalties

An Issuing Municipal Official is authorized to recover civil penalties in the following amounts for each violation:

First offense	\$160
Second offense	\$320
Third offense	\$480
Fourth offense	\$640
Fifth and subsequent Offenses	\$800

Offenses shall be counted on a calendar year basis.

SECTION 11 . Other Relief

In addition to the enforcement procedures available before the Judicial Bureau, the City Manager is authorized to commence a civil action to obtain injunctive and other appropriate relief, to request revocation of a license by the City Council, or to pursue any other remedy authorized by law.

Section 12. Authority

This ordinance is enacted by the City Council to promote the public health, safety and welfare of the City under the authority it is granted to regulate public entertainment activities set forth in 24 V.S.A. Section 2291 and Section 104 of the South Burlington City Charter. This ordinance shall constitute a civil ordinance within the meaning of 24 V.S.A. Chapter 59.

Section 13. Severability

Any part or provision of this ordinance shall be considered severable and the invalidity of any part or section will not be held to invalidate any other part or provision of the ordinance.

Section 14. Repeal of Prior Ordinances. Existing Licenses

This ordinance repeals and replaces any prior Ordinance Regarding Licensure and Regulation of Circuses, Carnivals and Other Shows, and any amendment thereto, in force at the time this ordinance takes effect. However, any existing license issued by the City Council under the Ordinance Regarding Licensure and Regulation of Circuses, Carnivals and Other Shows repealed hereby, shall remain in force and effect until April 30,2015, unless the City Council has provided for expiration of the license on an earlier date under Section 2(b) or unless said license is revoked by the City Council under Section 2(c).

TOWN OF BENNINGTON BOOK OF ORDINANCES

ARTICLE 16 OPEN CONTAINER

Article 16-1 Purpose

It is the purpose of this ordinance to protect the public health, welfare and promote the public enjoyment of lands under the control of the Town of Bennington.

Article 16-2 Authorization

By authority of 24 VSA Chapter 61 Section 2291 (18), municipalities are enabled to regulate consumption of alcohol in public places.

Article 16-3 Prohibitions

It shall be unlawful for any person to drink malt, vinous or spirituous liquors upon any public street, alley, sidewalk, parking place, or publicly-owned land nor in or upon any motor vehicle while moving or stationary in any said places. These acts are also unlawful on any privately owned land which is provided for use by the public. Possession upon ones person of any open container of any such liquor in any such place shall be prima facia evidence of a violation hereof.

Article 16-4 Exceptions

The provisions of this section shall not apply to premises where such liquors are legally sold for consumption on said premises or to recreational areas in which facilities are provided for picnics or to publicly-owned lands when the Select Board has granted approval for sale and/or consumption of such liquors.

Article 16-5 Enforcement

A violation of this ordinance shall be a civil matter enforced in accordance with the provisions of 24 VSA Section 1974a and 1977 et sq. A civil penalty of not more than \$75 may be imposed for violation of this civil ordinance and a waiver fee shall be set at \$50.

Each day that a violation continues will constitute a separate violation of this ordinance.

Article 16-6 Severability

This ordinance and the various parts, sentences, sections and clauses thereof, are hereby declared to be severable. If any part, sentence, section, or clause is adjudged invalid, it is hereby provided that the remainder of this ordinance shall not be affected thereby.

Article 16-7 Effective Date

1 This ordinance shall take effect sixty (60) days from date of adoption by the Select Board.

This ordinance is hereby adopted by the Select Board of the Town of Bennington, Vermont on this 121 h day of December 1995. It shall be printed in full in the minutes of the

Select Board, posted in five (5) conspicuous places within the Town of Bennington and a summary published in the Bennington Banner within fourteen (14) days of its adoption and shall become in full force and affect sixty (60) days after the date of adoption subject to the right of petition provided by law.

TOWN OF BRATTLEBORO CODE OF ORDINANCES

CHAPTER 1.5 ALCOHOLIC BEVERAGES

ARTICLE I. IN GENERAL

Sec. 1.5-1. Short title.

This chapter shall be known as the "Alcoholic Beverage Control Ordinance of 1975."

Sec. 1.5-2. Definitions

For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. The word "shall" is to be construed as mandatory and not merely directory.

Actual Possession is the detention and control, or the manual or physical custody, of a container or containers of a beverage for which possession is prohibited under the terms of this Chapter.

Alcohol is the product of distillation of any fermented liquor, rectified either once or oftener whatever may be the origin thereof, and includes ethyl alcohol and alcohol which is considered nonpotable.

Constructive Possession is where one, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control, either directly or through another person or persons, over a container or containers of a beverage for which possession is prohibited under the terms of this Chapter.

Malt Beverage is any fermented beverage of any name or description manufactured for sale from malt, wholly or in part, or from any substitute thereof, known as beer, porter, ale and stout, containing not less than one (1) per cent nor more than six (6) per cent of alcohol by volume at sixty (60) degrees Fahrenheit.

Person is an individual, partnership, corporation, association, trust or other institution or entity.

Public Place is a place to which the general public has a right to resort, including but without limitation thereto all lands and buildings owned by or leased to the Town of Brattleboro School District, or Brattleboro Union High School District No. 6, or their successors, and shall include all public streets, highways, bridges and sidewalks within the town.

*Editor's note – The alcoholic beverage control ordinance adopted May 13, 1975, nonamendatory of the Code, has been included as chapter 1.5 at the discretion of the editor.

Cross reference – Possession of intoxicating beverages in taxicabs, §17-22.

Spirits is any beverage containing alcohol obtained by distillation, fortified wines and liquors and any other beverage containing more than twenty (20) per cent of alcohol by volume at sixty (60) degrees Fahrenheit.

Vinous beverage is all fermented beverages of any name or description manufactured or obtained for sale from the natural sugar contents of fruits, or other agricultural products, containing sugar, the alcoholic content of which is not less than one (1) per cent nor more than sixteen (16) per cent by volume at sixty (60) degrees Fahrenheit.

Sec. 1.5-3. Penalty.

A person who violates any provision of this chapter shall be fined one hundred dollars (\$100.00) and the waiver fee shall be fifty dollars (\$50.00). A second offense or any subsequent offense(s) the fine shall be two hundred dollars (\$200) and the waiver fee shall be one hundred dollars (\$100). (Ord. Of 5-13-75, Art. IV, § 1)

Secs. 1.5-4 - 1.5-15. Reserved.

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

ARTICLE II. REGULATION

Sec. 1.5-16. Prohibition.

- a) It shall be unlawful for any person to have actual or constructive possession of any spirituous liquor, alcohol, vinous or malt beverages as defined herein on, under or above the land or premises owned or leased by the Town of Brattleboro School District or the Brattleboro Union High School District No. 6.
- b) It shall be unlawful for any person to have constructive or actual possession of any open beverage container containing any quantity of spirituous liquor, alcohol, vinous or malt beverages in any public place or in any motor vehicle located in a public place.
- c) It shall be unlawful for any person to consume any quantity of spirituous liquor, alcohol, vinous or malt beverages in any public place or in any motor vehicle located in a public place.

Sec. 1.5-17. Exceptions; permits.

Upon first obtaining a written permit, a group of employees of the Town of Brattleboro who wish to sponsor an event to be held within a building leased or owned by the Town may be exempted from the provisions of section 1.5-16 for a short period of time only, not to exceed six (6) hours, except that no permits shall be issued for school property. Permits may be obtained from the Town Manager.

SAMPLE MUNICIPAL ORDINANCES REGULATING ALCOHOL

CITY OF BARRE ORDINANCES

CHAPTER 11 -- OFFENSES AND MISCELLANEOUS PROVISIONS

Sec. 11-31. Trespassing in City Parks, Playgrounds and Recreation Areas. (Ord. No. 2013-01, 09/04/12)

- (a) Hours of operation. Public Parks as defined herein within the City shall be open for use between the hours of 6:00 A.M. and 10:00 P.M. only: provided, however, that for programs or events sponsored or approved by the City, or for which a City Permit has been issued, said hours of operation may be extended during any such program or event and for a period of sixty minutes following the conclusion of such program or event. Signs stating park hours shall be posted prominently in each park. (Ord. No. 2013-01, 09/04/12)
- (b) Hours of operation. Public playgrounds and recreation areas as defined herein within the City shall be open for use between the hours of 8:00 A.M. and 9:00 P.M. only; provided, however, that for programs or events sponsored or approved by the City, or for which a City Permit has been issued, said hours of operation may be extended during any such program or event for a period of sixty minutes following the conclusion of such program or event. Signs stating hours of operation shall be posted prominently in each playground and recreation area. (Ord. No. 2013-01, 09/04/12)
- (c) No smoking in Public Parks, playgrounds and recreation area. Smoking or use of tobacco products shall be prohibited from Public Parks, playgrounds and recreation areas. (Ord. No. 2013-01, 09/04/12)
- (d) No food and/or drink around Youth Triumphant. No food and/or drink is allowed on or around the Youth Triumphant memorial, including the statue, bench, steps, apron and all granite areas surrounding the memorial. (Ord. No. 2013-04, 09/04/12)
- (e) Definitions. The following are defined as public parks within the City of Barre:

- (1) City Hall Park.

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

- (2) Currier Park.
- (3) Dente Park.
- (4) Rotary Park.

The following are defined as public playgrounds and recreation areas within the City of Barre:

(1) Rotary Park. Includes picnic shelters, ball field, tennis courts, basketball courts, skate park, pool, playground and all parking areas.

- (2) Matthewson Playground.
- (3) Garfield Playground.
- (4) Vine Street Playground.
- (5) Nativi Playground.
- (6) Wobby Park Playground.
- (7) Tarquinio Park.
- (8) North Barre Ice Rink.
- (9) Bailey Recreation Field.
- (10) Lincoln School Recreation Field. (Ord. No. 2013-01, 09/04/12)

(e) Separability. The provisions of this ordinance are separable, and the invalidity of any part of this ordinance shall not affect the validity of the rest of the ordinance.

(f) Enforcement. Provisions of Section 11-31 may be enforced by any law enforcement officer.
(Ord. 1996-2, 6/10/96)(Ord. No. 2013-01, 09/04/12)

(1) Where a person fails to remedy a violation to the satisfaction of the law enforcement officer, the officer may bring appropriate action to enforce the provisions of this ordinance.

Enforcement may be by any means allowed under state law including, but not limited to:

(a) The law enforcement officer may issue, or direct to have issued, a Municipal Complaint and pursue enforcement before the Judicial Bureau in accordance with the provisions of 24 V.S.A. §1974 and §1977 with penalties as prescribed below:

i. First offence. A first offence of this ordinance shall be punishable by a fine of \$100. The waiver fee shall be \$50.

ii. Subsequent offences. Any subsequent offences of the same provision of the bylaws within a 12 month period shall be punishable by a fine of \$200. The waiver fee shall be \$100.

(b) The law enforcement officer may notify the City Attorney of the violation who can take action in Superior Court seeking injunctive relief as appropriate with penalties as prescribed below:

i. Any person who violates this ordinance shall be fined not more than the amount prescribed under 24 V.S.A. Chapter 83 which at the time of the development of these regulations is \$200.

CODE OF ORDINANCES OF THE CITY OF BURLINGTON, VERMONT ARTICLE I, CHAPTER 17

17-8 Smoking in places of public access, places with liquor licenses and workplaces.

(a) Purpose. The purpose of this section is to protect the public health, safety, and welfare by generally prohibiting smoking in places of public access, places with liquor licenses, and places of work, and fixing the requirements of property owners and persons with tobacco products in this regard.

(b) Definitions.

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

(1) "Tobacco products" mean cigarettes, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, Cavendish, plug and twist tobacco, fine cut and other chewing tobacco, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco prepared in a manner suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

(2) "A place of public access" means any indoor or partially enclosed place of education, government, social services, professional services, athletic activity, business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which the general public has access or which the general public uses, including buildings, offices, means of transportation, common carrier waiting rooms, arcades, restaurants, bars and cabarets, retail stores, grocery stores, libraries, theatres, concert halls, auditoriums, arenas, barber shops, hair salons, laundromats, shopping malls, museums, art and science galleries, sports and fitness facilities, planetariums, historical sites, and common areas of nursing homes, hospitals, resorts, hotels and motels, including the lobbies, hallways, elevators, restaurants, restrooms and cafeterias.

(3) "Workplace" shall mean an enclosed structure where employees perform services for an employer or, in the case of an employer who assigns employees to departments, divisions or similar organizational units, the enclosed portion of a structure where the unit to which the employee is assigned is located.

(4) "Places with liquor licenses" shall mean any inside space and partially enclosed space covered by a license to sell alcoholic beverages including without limitation a special events or festival permit issued pursuant to Title 7 of the Vermont Statutes Annotated.

(5) "Smoking area" means a separately enclosed and ventilated area that employees are not required to visit on a regular basis where smoking is permitted pursuant to a policy established under 18 V.S.A. Chapter 28, Subchapter 2.

(6) "Partially enclosed" means any place which is:

(A) Covered by a roof or ceiling of any material, but excluding umbrellas.

(c) [Prohibited.] Except as otherwise provided herein, smoking in places of public access, workplaces and places with liquor licenses prohibited. The possession of lighted tobacco products in any form is prohibited in indoor and partially enclosed (1) places of public access, (2) places with liquor licenses and (3) all workplaces.

(d) Exceptions. The restrictions in this section on possession of lighted tobacco products in places with liquor licenses and workplaces shall not apply to:

(1) Reserved.

(2) Separately enclosed and ventilated workplace smoking areas implemented pursuant to 18 V.S.A. Chapter 28, Subchapter 2; and

(3) Areas not commonly open to the public of owner-operated businesses with no employees.

(e) Posting; supervision. Any person or employer who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions contained in this section shall have the responsibility of properly posting and maintaining "No Smoking" signs or the international "No Smoking" symbol (a picture of a burning cigarette inside a red circle with a red bar across it) clearly and conspicuously throughout the premises. The color of such signs, when not of the international type, shall have lettering that is distinct, contrasting to the background and easily read.

(f) Enforcement.

(1) Any person or employer who controls the use of any premises subject to the restrictions contained in this section who observes a person in possession of lighted tobacco products in apparent violation of this section shall ask the person to extinguish all lighted tobacco products. If the person persists in the possession of lighted tobacco products, the person or employer who controls the use of the premises shall ask the person to leave the premises and shall call the police if the person refuses.

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

(2) It shall also be a separate and distinct violation for a person in possession of lighted tobacco products in violation of this chapter to:

(A) Refuse a request to extinguish such a product by a person or employer who controls the use of the premises; or

(B) Refuse to leave the premises after being directed to do so by a person or employee who controls the use of the premises.

(3) Any person or employer who controls the use of any premises subject to the restrictions continued in this section who fails to fulfill the requirements of subsection (e) or subsection (f)(1) shall also be in violation of this section.

(4) Any person convicted of a violation or violations of this section shall be subject to a civil penalty, the fine for which shall be no less than fifty dollars (\$50.00) and no more than five hundred dollars (\$500.00), with a waiver penalty of fifty dollars (\$50.00), for each such violation.

(5) All municipal officials duly authorized to issue Vermont Municipal Complaints are authorized to issue complaints for violations of this section.

(Ord. of 2-23-87; Ord. of 4-6-05)

CODE OF ORDINANCES OF THE CITY OF BURLINGTON, VERMONT ARTICLE I, CHAPTER 17

17-8A Smoking prohibitions at city parks.

(a) Purpose. The purpose of this section is to protect the public health, safety, and welfare by prohibiting smoking in areas of city parks where people congregate and assemble for recreation, leisure and other purposes.

(b) Definitions.

(1) "Tobacco products" shall mean cigarettes, cigars, cheroots, stogies, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco prepared in a manner suitable for smoking in a pipe or otherwise or for smoking.

(2) "Smoking" shall mean possession of lighted tobacco products.

(3) "Parks" shall mean all parks within the city limits as enumerated under Section 22-1.

(c) Prohibited. Except as otherwise provided herein, smoking is prohibited at all city park playgrounds, shelters, beaches, bleachers and athletic fields. These locations, as identified by the director of parks and recreation and to be buffered by an additional twenty-five (25) feet beyond their physical boundaries, shall be designated as smoke-free areas. Additionally, it shall be within the discretion of the director of parks and recreation to designate specific smoke-free areas within any campground at a city park. The possession of lighted tobacco products in any form is prohibited in the above referenced smoke-free areas.

(d) Posting; supervision. The city shall properly post and maintain "No Smoking" signs or the international "No Smoking" symbol (a picture of a burning cigarette inside a red circle with a red bar across it) clearly and conspicuously throughout the designated smoke-free areas. The color of such signs, when not of the international type, shall have lettering that is distinct, contrasting to the background and easily read. These signs shall be placed so as to inform but not detract from the designated smoke-free areas.

(e) Enforcement.

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

(1) Any person convicted of a violation or violations of this section shall be subject to a civil penalty, the fine for which shall be no less than fifty dollars (\$50.00) and no more than two hundred dollars (\$200.00), with a waiver penalty of fifty dollars (\$50.00), for each such violation.

(2) All municipal officials duly authorized to issue Vermont Municipal Complaints are authorized to issue complaints for violations of this section.

(Ord. of 3-22-10(1))

CODE OF ORDINANCES OF THE CITY OF BURLINGTON, VERMONT ARTICLE I, CHAPTER 17

17-8B Smoking in outdoor places prohibited.

(a) Purpose. The purpose of this section is to protect the health of residents and visitors by limiting and eliminating exposure to secondhand smoke in outdoor places.

(b) Definitions.

(1) "Tobacco products" and "Tobacco substitute" shall have the meanings given in 7 V.S.A. § 1001.

(2) "Smoking" shall mean possession of lighted tobacco products or possession and use of tobacco substitutes.

(c) Prohibited activity. Smoking shall be prohibited outdoors in the Church Street Marketplace District which includes all of Church Street and the properties which have frontage thereon, bounded on the north by the northernmost property line of properties bounded by Church and Pearl Streets, and bounded on the south by the southernmost property lines of properties at the northern corners of the Church and Main Street intersection, and more precisely shown on a plan entitled "Church Street Marketplace District" recorded with the chief administrative officer of the City of Burlington on June 27, 1979.

(d) Exceptions. The prohibition of smoking within the area designated for no smoking shall not apply to:

(1) Private property.

(e) Posting; supervision. The city shall properly post and maintain "No Smoking" signs or the international "No Smoking" symbol (a picture of a burning cigarette inside a red circle with a red bar across it) clearly and conspicuously throughout the designated smoke-free areas. The color of such signs, when not of the international type, shall have lettering that is distinct, contrasting to the background and easily read. These signs shall be placed so as to inform but not detract from the designated smoke-free areas.

(f) Enforcement. Any law enforcement officer may enforce the provisions of this section. Prior to the issuance of a Vermont Municipal Complaint, a law enforcement officer shall warn the person to be issued of the prohibition and ask the person to cease smoking. The failure to immediately stop smoking in the prohibited smoking area after such warning shall be a civil ordinance violation punishable by a penalty of fifty dollars (\$50.00), the waiver penalty for which shall be fifty dollars (\$50.00). Law enforcement officers do not need to issue additional warnings to any person who has been previously warned of the prohibitions in this section and a person so previously warned who engages in the activity prohibited by this section shall be in violation of the section, subject to a civil ordinance penalty of one hundred dollars (\$100.00), the waiver penalty for which shall be fifty dollars (\$50.00).

(Ord. of 11-10-14)

CITY OF MONTPELIER CODE OF ORDINANCES ARTICLE XI

ARTICLE XI. SMOKING WITHIN CITY PARKS

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

Sec. 11-1100. SMOKING PROHIBITED.

No person shall hold or possess any lighted cigar, cigarette, pipe or device containing tobacco or a tobacco product or a tobacco substitute within or upon any park, field or recreational area owned by the City which is conspicuously posted with signage prohibiting smoking.

Sec. 11-1101. DEFINITIONS.

The terms "tobacco product" and "tobacco substitute" shall have the meaning ascribed to them by general law.

Sec. 11-1102. DESIGNATION.

This ordinance is designated a civil ordinance.

Sec's. 11-1103 to 11-1199. Reserved.

Enacted July 8, 2015; Effective Date: July 23, 2015.

CITY OF RUTLAND CODE OF ORDINANCES

TITLE 34

Parks--

§ 8003. Sanitation, Use of Tobacco Products; No person in a park shall:

1. Pollute the natural waters located in the parks.
2. Refuse and trash. Have brought in or shall dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage, or refuse, or other trash. No such refuse or trash shall be placed in any waters in or contiguous to any park, or left anywhere on the grounds thereof, but shall be placed in the proper receptacles where these are provided; where receptacles are not so provided, all such rubbish or waste shall be carried away from the park by the person responsible for its presence, and properly disposed of elsewhere.
3. Be in possession of lighted tobacco products in any form.
4. Place, maintain or chew, within their mouth, smokeless tobacco products.
(Effective 10-14-2010)

CITY OF ST. ALBANS

TITLE 13, CHAPTER 5

3920. Smoking Prohibited in City Parks It shall be unlawful to smoke in City Parks.

TOWN OF WILLISTON

ORDINANCE PROHIBITING SMOKING IN PLACES OF PUBLIC ACCESS

The Selectboard of the Town of Williston hereby ordains:

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Section 4: Smoking Prohibited Places of Public Access

Section 5: Exceptions

Section 6: Posting of "No-Smoking" Signs

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

Section 7: Enforcement and Penalties

Section 8: Severability

1. PURPOSE

It is the purpose of this Ordinance to promote the public health, safety and welfare of residents of and visitors to the Town Of Williston by prohibiting smoking in places of public access.

2. AUTHORITY

This Ordinance is adopted pursuant to the authority contained in 24 V.S.A. section 2291 (14).

3. DEFINITIONS

3.1. "Persons": as used in this Ordinance shall mean and include any person, firm, partnership, association, corporation, company or organization of any kind.

3.2. "Place or Public Access" shall have the same meaning contained in 18 V.S.A. Section 1741 (2), as now enacted and hereafter amended.

3.3. "Publicly owned buildings and offices" shall have the same meaning contained in 18 V.S.A. Section 1741 (3), as now enacted or hereafter amended.

3.4. "Tobacco products" shall have the same meaning contained in 7 V.S.A. section 1001 (4), as now enacted or hereafter amended.

4. SMOKING PROHIBITED IN PLACES OF PUBLIC ACCESS

All persons shall be prohibited from possessing any lighted tobacco products, in any form, in the common areas of all enclosed indoor places of public access and publicly owned buildings and offices.

5. EXCEPTIONS

The restrictions in Section 5 on possession of lighted tobacco products shall not apply to:

5.1. Buildings owned and operated by social, fraternal, or religious organizations when used by the membership or the organization, their guests or families, or any facility that is rented or leased for private functions from which the public is excluded and for which arrangements are under the control of the sponsor of the function;

5.2. Workplace smoking areas designated under 18 V.S.A. Chapter 28, subchapter 2;

5.3. Areas not commonly open to the public of owner-operated businesses with no employees.

6. POSTING OF "NO-SMOKING" SIGNS

6.1. Any person or employer who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions contained in Section 5, above, shall have the responsibility of properly posting and maintaining "No Smoking" signs or the international "No-Smoking" symbol (a picture of a burning cigarette inside a red circle with a red bar across it) clearly and conspicuously throughout the premises.

6.2. The color of such signs, when not of the international type, shall have lettering that is distinct, contrasting to the background and easily read.

7. ENFORCEMENT & PENALTIES

7.1. Any person who violates a provision of this civil ordinance shall be subject to a civil penalty of up to \$500.00 per day for each day that such violation continues. The Administrative Officer, or any Law Enforcement Officer of the Town of Williston shall be authorized to act as Issuing Municipal Officials to issue and pursue before the Judicial Bureau a municipal complaint.

7.2. Waiver Fee: An Issuing Municipal Official is authorized to recover a waiver fee, in lieu of a civil penalty, in the following amounts, for any person and/or owner/lessee who declines to contest a municipal complaint and pay the waiver fee:

Individual Owner/Lessee

First Offense: \$25.00 \$25.00

Second Offense: \$50.00 \$50.00

Subsequent Offenses: \$100.00 \$100.00

Offenses shall be counted on a calendar year basis.

7.3. Civil Penalties: An Issuing Municipal Official is authorized to recover civil penalties in the following amounts for each violation:

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

Individual Owner/Lessee

First Offense: \$50.00 \$50.00

Second Offense: \$75.00 \$75.00

Subsequent Offenses: \$125.00 \$125.00

Offenses shall be counted on a calendar year basis.

7.4. Other Relief: In addition to the enforcement procedures available before the Judicial Bureau, the Town Manager is authorized to commence a civil action to obtain injunctive relief by the Town Selectboard or to pursue any other remedy authorized by law.

8. SEVERABILITY

Any part or provision of this Ordinance shall be considered severable, and if any provision of this Ordinance or the application thereto to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions of application, and to this end the provisions of this Ordinance are declared severable.

This ordinance adopted September 20, 2004 will take effect November 22, 2004.

Appendix E: Centers for Disease Control and Prevention (CDC)
2013 Prevention Status Reports (PSR) (Tobacco and Alcohol)

Prevention Status Report | 2013

Excessive Alcohol Use

Vermont

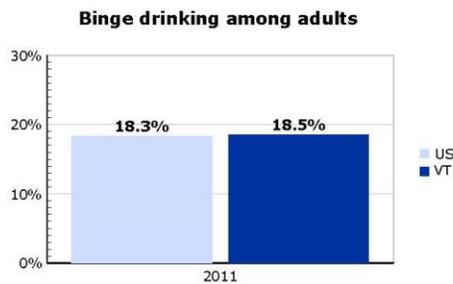
Public Health Problem

⚠ Excessive alcohol use is responsible for about 88,000 deaths and 2.5 million years of potential life lost in the United States each year (1). Binge drinking (five or more drinks per occasion for men or four or more drinks per occasion for women) is responsible for more than half the deaths and two-thirds of the years of potential life lost resulting from excessive alcohol use (2).

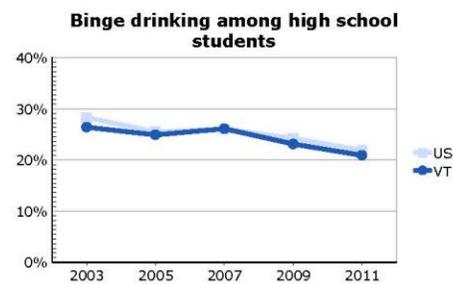
Excessive drinking results in 183 deaths and 4,335 years of potential life lost each year in Vermont (1).

👤 In Vermont, 18.5% of adults and 20.9% of high school students reported binge drinking in 2011 (3,4).

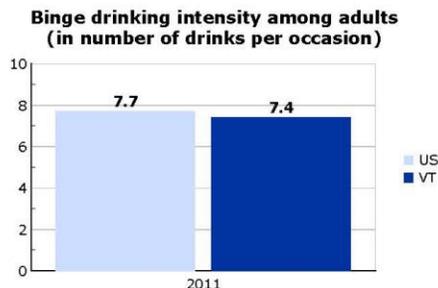
💰 Excessive alcohol use cost the United States \$223.5 billion, or \$1.90 per drink consumed, in 2006 as a result of lost workplace productivity, healthcare expenses, and crime (5). In Vermont, excessive alcohol use cost \$423.7 million, or \$1.45 per drink (6).



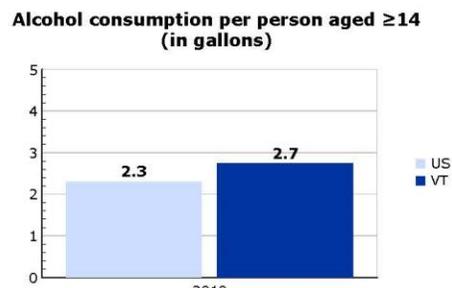
Source: Behavioral Risk Factor Surveillance System (3)



Source: Youth Risk Behavior Surveillance System (4)



Source: Behavioral Risk Factor Surveillance System (3)



Source: Alcohol Epidemiologic Data System (7)

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Excessive Alcohol Use

Vermont

Policy and Practice Solutions

This report focuses on policies and practices recommended by the Community Preventive Services Task Force on the basis of scientific studies supporting their effectiveness in reducing excessive alcohol consumption and related harms (8). These policies and practices include 1) increasing alcohol excise taxes (e.g., state taxes on beer, distilled spirits, and wine); 2) having commercial host (dram shop) liability laws; and 3) regulating alcohol outlet density (8–10). Other strategies supported by scientific evidence include avoiding further privatization of retail alcohol sales and providing adults (including pregnant women) with screening and brief intervention for excessive alcohol use (11,12). For information about why certain alcohol-related indicators were selected, and for links to additional data and resources, visit the CDC website (<http://www.cdc.gov/stltpublichealth/psr/alcohol/>).

Status of Policy and Practice Solutions in Vermont

State beer tax

As of January 1, 2012, Vermont's excise tax per gallon of beer was \$0.27 (13).

Task Force on Community Preventive Services recommendation: Increase alcohol excise taxes. Studies show that a 10% increase in the price of beer would likely reduce beer consumption by approximately 5% (8).

Rating	State beer tax
Green	≥\$1.00 per gallon
Yellow	\$0.50–\$0.99 per gallon
Red	\$0.00–\$0.49 per gallon

State distilled spirits tax

As of January 1, 2012, Vermont directly controlled the sale of distilled spirits at the retail and/or wholesale levels. State prices for distilled spirits combined both markups and taxes, so tax rates for this beverage type could not be determined (14).

Task Force on Community Preventive Services recommendation: Increase alcohol excise taxes. Studies show that a 10% increase in the price of distilled spirits would likely reduce distilled spirits consumption by approximately 8% (8).

Rating	State distilled spirits tax
Green	≥\$8.00 per gallon
Yellow	\$4.00–\$7.99 per gallon
Red	\$0.00–\$3.99 per gallon

State wine tax

As of January 1, 2012, Vermont's excise tax per gallon of wine was \$0.55 (15).

Task Force on Community Preventive Services recommendation: Increase alcohol excise taxes. Studies show that a 10% increase in the price of wine would likely reduce wine consumption by approximately 6% (8).

Rating	State wine tax
Green	≥\$2.00 per gallon
Yellow	\$1.00–\$1.99 per gallon
Red	\$0.00–\$0.99 per gallon

Commercial host (dram shop) liability laws

As of January 1, 2011, Vermont had commercial host liability with no major limitations (16,17).

Task Force on Community Preventive Services recommendation: Presence of commercial host (dram shop) liability for sale or service to either underage patrons or intoxicated adults. Evidence shows these laws are associated with a reduction in alcohol-related harms, including a median 6.4% reduction in deaths from motor vehicle crashes (9).

Rating	State had
Green	Commercial host liability with no major limitations
Yellow	Commercial host liability with major limitations
Red	No commercial host liability

Prevention Status Report | 2013

Excessive Alcohol Use

Vermont

Local authority to regulate alcohol outlet density

As of January 1, 2012, Vermont had mixed alcohol retail licensing policies (18).

Task Force on Community Preventive Services recommendation: Use regulatory authority (e.g., through licensing and zoning) to limit alcohol outlet density. Evidence shows greater alcohol outlet density is associated with excessive drinking and related harms, including injuries and violence (10). Local control allows communities to better address density problems (18).



Rating	State had
Green	Exclusive local or joint state/local alcohol retail licensing
Yellow	Exclusive state alcohol retail licensing with local zoning authority or other mixed policies
Red	Exclusive state alcohol retail licensing

Simplified Rating System

A more detailed explanation of the rating system for excessive alcohol use is available at <http://www.cdc.gov/stlpublichealth/psr/alcohol/>.

Green

The policy or practice is established in accordance with supporting evidence and/or expert recommendations. Higher tax levels are rated green.

Yellow

The policy or practice is established in partial accordance with supporting evidence and/or expert recommendations. Intermediate tax levels are rated yellow.

Red

The policy or practice is either absent or not established in accordance with supporting evidence and/or expert recommendations. Lower tax levels are rated red.

Indicator Definitions

State beer tax: The excise tax rate, in dollars per gallon, imposed by the state on beer containing 5% alcohol by volume. State beer excise tax does not include any additional taxes, such as those based on price rather than volume (e.g., ad valorem or sales taxes) that states may have implemented at the wholesale or retail level. State beer taxes ranged from \$0.02 to \$1.07 across states for which excise tax data were available.

State distilled spirits tax: The excise tax rate, in dollars per gallon, imposed by the state on distilled spirits containing 40% alcohol by volume. State distilled spirits excise tax does not include any additional taxes, such as those based on price rather than volume (e.g., ad valorem or sales taxes) that states may have implemented at the wholesale or retail level. State distilled spirits taxes ranged from \$1.50 to \$14.25 across states for which excise tax data were available. For states with different tax rates for distilled spirits sold off-sale (e.g., at liquor stores) and on-sale (e.g., at restaurants), the off-sale tax rate has been reported.

State wine tax: The excise tax rate, in dollars per gallon, imposed by the state on wine containing 12% alcohol by volume. State wine excise tax does not include any additional taxes, such as those based on price rather than volume (e.g., ad valorem or sales taxes) that states may have implemented at the wholesale or retail level. State wine taxes ranged from \$0.11 to \$2.50 across states for which excise tax data were available.

Commercial host (dram shop) liability laws: Laws that hold alcohol retailers liable for alcohol-attributable harms (e.g., injuries or deaths resulting from alcohol-related motor vehicle crashes) caused by patrons who were illegally sold or served alcohol because they were either intoxicated or under the minimum legal drinking age of 21 years at the time of sale or service. State commercial host liability laws are considered to have major limitations if they 1) cover underage patrons or intoxicated adults but not both, 2) require increased evidence for finding liability, 3) set limitations on damage awards, or 4) set restrictions on who may be sued.

Local authority to regulate alcohol outlet density: The extent to which a local government can implement zoning (land use) or licensing controls over the number of alcohol retailers (e.g., bars, restaurants, liquor stores) in its geographic area.

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Excessive Alcohol Use

Vermont

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Tobacco Use

Vermont

The Prevention Status Reports (PSRs) highlight—for all 50 states and the District of Columbia—the status of public health policies and practices designed to prevent or reduce important health problems. This report focuses on tobacco use and briefly describes why it is a public health problem, both for Vermont and the United States as a whole. It also provides an overview of solutions (i.e., evidence-based or expert-recommended policy and practice options) for preventing or reducing tobacco use and reports the status of these solutions in Vermont.

PSR Framework

The PSRs follow a simple framework:

- Describe the public health **problem** using public health data
- Identify potential **solutions** to the problem drawn from research and expert recommendations
- Report the **status** of those solutions for each state and the District of Columbia

Criteria for Selection of Policies and Practices

The policies and practices included in the PSRs were selected because they

- Can be monitored using state-level data that are readily available for most states and the District of Columbia
- Meet one or more of the following criteria:
 - Supported by systematic review(s) of scientific evidence of effectiveness (e.g., *The Guide to Community Preventive Services*)
 - Explicitly cited in a national strategy or national action plan (e.g., *Healthy People 2020*)
 - Recommended by a recognized expert body, panel, organization, study, or report with an evidence-based focus (e.g., Institute of Medicine)

Ratings

The PSRs use a simple, three-level rating scale to provide a practical assessment of the status of policies and practices in each state and the District of Columbia. It is important to note that the ratings reflect the *status of policies and practices* and do not reflect the *status of efforts* by state health departments, other state agencies, or other organizations to establish or strengthen those policies and practices. Strategies for improving public health vary by individual state needs, resources, and public health priorities.

More Information

For more information about public health activities in Vermont, visit the Vermont Department of Health website (<http://healthvermont.gov/>). For additional resources and to view reports for other health topics, visit the CDC website (<http://www.cdc.gov/stltpublichealth/psr/>).

Suggested Citation

Centers for Disease Control and Prevention. *Prevention Status Reports 2013: Tobacco Use—Vermont*. Atlanta, GA: US Department of Health and Human Services; 2014.

PSR | 2013
www.cdc.gov/stltpublichealth/psr



Centers for Disease Control and Prevention
Office for State, Tribal, Local and Territorial Support

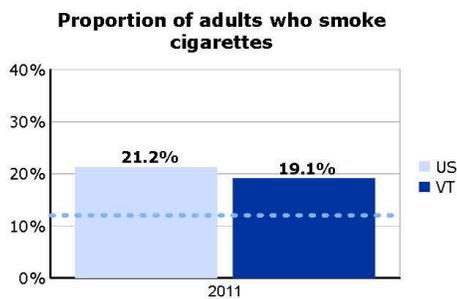
Prevention Status Report | 2013

Tobacco Use

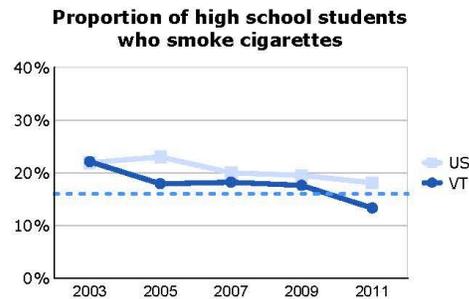
Vermont

Public Health Problem

-  Tobacco use is the leading cause of preventable death in Vermont and the United States overall. Smoking harms nearly every organ in the body and causes cancer, heart disease, stroke, respiratory illness, and many other health problems (1).
-  During 2007–08, in the United States, 37% of adult nonsmokers and 54% of children aged 3–11 years were exposed to secondhand smoke (2).
-  Smoking and exposure to secondhand smoke result in \$96 billion in medical expenditures and \$97 billion in lost productivity annually in the United States. In Vermont, smoking causes \$242 million in personal healthcare expenditures and \$192.2 million in lost productivity annually (3).



Sources: Behavioral Risk Factor Surveillance System (4), National Health Interview Survey (5)
Healthy People 2020 target: 12.0% (dotted blue line) (6)



Source: Youth Risk Behavior Surveillance System (7)
Healthy People 2020 target: 16.0% (dotted blue line) (6)

Policy and Practice Solutions

This report focuses on policies and practices recommended by the Institute of Medicine, World Health Organization, Community Preventive Services Task Force, US Surgeon General, and Centers for Disease Control and Prevention on the basis of scientific studies supporting the policies' effectiveness in preventing or reducing tobacco use (8–11,13,14). These policies and practices include 1) increasing state cigarette excise taxes, 2) establishing statewide smoke-free policies, and 3) sustaining tobacco control program funding. Other strategies also supported by scientific evidence include hard-hitting media campaigns and systemic changes to increase access to and use of cessation services. For information about why certain tobacco-related indicators were selected, and for links to additional data and resources, visit the CDC website (<http://www.cdc.gov/stltpublichealth/psr/tobacco/>).

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Status of Policy and Practice Solutions in Vermont

State cigarette excise tax

As of June 30, 2013, Vermont's cigarette excise tax was \$2.62 per pack, compared with the highest state tax of \$4.35 (range = \$0.17-\$4.35) (15).

Healthy People 2020 target: An increased excise tax in all states and the District of Columbia by \$1.50 per pack by the year 2020 (6). This increase would generate millions of dollars in revenue annually, prevent more children from starting to smoke, help smokers quit, save lives, and save millions in long-term healthcare costs (16,17).



Rating	State excise tax was
Green	\$2.00 per pack or above
Yellow	\$1.00-\$1.99 per pack
Red	Less than \$1.00 per pack

Comprehensive state smoke-free policy

As of June 30, 2013, Vermont had a statewide smoke-free policy covering workplaces, restaurants, and bars (15).

Healthy People 2020 target: A statewide ban on smoking in public places and worksites in all states and the District of Columbia (6). Studies have shown that smoke-free policies reduce secondhand smoke exposure, help smokers quit, and reduce heart attack and asthma hospitalizations (10,11,17-21).



Rating	State smoke-free policy covered
Green	Workplaces, restaurants, and bars
Yellow	Two of the three locations
Red	One or none of the locations

Funding for tobacco control

As of fiscal year 2010, Vermont allocated 56.7% of the CDC-recommended funding for tobacco control (\$5.9 million of \$10.4 million) (22).

CDC recommendation: Tobacco control funding at 100% of CDC's recommended annual investment in all states and the District of Columbia (14). States that have made larger investments in comprehensive tobacco control programs have seen cigarette sales drop more than twice as much as sales in the United States as a whole, and smoking prevalence among adults and youth has declined faster as spending for tobacco control programs has increased (14,23,24).



Rating	Funding level was at
Green	100% or more of CDC recommendation
Yellow	50.0%-99.9% of CDC recommendation
Red	Less than 50% of CDC recommendation

Simplified Rating System

A more detailed explanation of the rating system for tobacco use is available at <http://www.cdc.gov/stlpublichealth/psr/tobacco/>.

Green

The policy or practice is established in accordance with supporting evidence and/or expert recommendations.

Yellow

The policy or practice is established in partial accordance with supporting evidence and/or expert recommendations.

Red

The policy or practice is either absent or not established in accordance with supporting evidence and/or expert recommendations.

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Vermont

Indicator Definitions

State cigarette excise tax: The amount of state excise tax, in dollars, on a pack of 20 cigarettes.

Comprehensive state smoke-free policy: A state law that prohibits smoking in all indoor areas of private workplaces, restaurants, and bars, with no exceptions (25).

Funding for tobacco control: The amount of funding allocated for state tobacco control activities, including state and federal dollars. Note: Data provided for fiscal year 2010 funding do not include nongovernmental funding sources or federal funds from the American Recovery and Reinvestment Act Prevention Wellness Initiative announced in March 2010. Additionally, the amount allocated per fiscal year does not always match the amount spent during the year.

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Appendix F: Memo to Selectboards, Town Managers, and Municipal Officials with Model Rental and Use Agreements

MEMORANDUM

To: Selectboard Members, Town Managers, Municipal Officials
From: Jim Barlow, Acting Director and Senior Staff Attorney
Date: April 1, 2008
RE: Model Facility Rental Agreements
Model Facility Use Policy

The Vermont League of Cities and Towns has drafted two basic Model Facility Rental Agreements and a Facility Use Policy to assist those municipalities seeking to rent their town halls, parks, and other public facilities for private events.

Both models set out the essential provisions of a simple facility rental agreement and describe a basic set of obligations for the renter. Model One provides for rental of a municipal facility on a per-event basis and might be used, for example, to rent a town hall for a wedding or social gathering. Model Two provides for periodic rental of a municipal facility by a person or group. It might be used, for example, to rent a meeting room to a community group. The Model Facility Use Policy provides an example for prioritizing uses and addresses common issues faced by municipalities in making their facilities available to the public.

Municipalities should ensure that their facilities are available to all qualified users on equal terms without regard to race, color, religion, creed, gender, national origin, age, disability, marital or veteran status, sexual orientation, or other status covered by applicable state or federal laws or regulations. In this regard, municipalities should not discriminate against users of the facilities based on the users' particular viewpoint. Likewise, while municipalities cannot promote religion, they must make their facilities available to religious organizations on the same terms and conditions as such facilities are made available to non-religious organizations.

We believe these basic models should be reasonably easy for Vermont municipalities to adapt to their particular needs. Nevertheless, we encourage you to give careful consideration to each element of the models in light of your community's expectations. It should be remembered that a model is a starting point, not a final product. We recommend that you have your municipal attorney review any rental agreement before it is adopted.

Sponsor of:

VLCT Health Trust, Inc.

VLCT Municipal Assistance
Center

VLCT Property and Casualty
Intermunicipal Fund, Inc.

VLCT Unemployment
Insurance Trust, Inc.

Model Agreement One

**TOWN of _____, VERMONT
FACILITY RENTAL AGREEMENT**

This Rental Agreement, dated _____, 20__ by and between the Town of _____ (the Town), and _____ [insert name] _____, (the Renter). In consideration of the mutual covenants and conditions herein, the parties agree as follows:

1. **FACILITY.** The Town rents to Renter the _____ in _____, Vermont (the Facility) for the Event described below.
2. **EVENT.** Renter will use the Facility for the following Event:

3. **DATE and TERM.** The date of the Event will be _____, from ____ (a.m./p.m.) until ____ (a.m./p.m.).
4. **RENT AND SECURITY DEPOSIT.** Renter will pay the Town a rental fee of \$_____ at the signing of this Rental Agreement. Renter will also pay the Town a security deposit of \$_____ at the signing of this Rental Agreement.
5. **OBLIGATIONS OF RENTER.** At the end of the rental term, Renter will return the Facility in a neat, orderly and clean condition. Renter will be responsible for, and liable to, the Town for all repairs to the Facility required as a result of damage caused by Renter and Renter's guests.
6. **OCCUPANCY.** Occupancy of the Facility will be limited to ____ persons.
7. **SMOKING.** Smoking is prohibited in the Facility.
8. **INSURANCE.** Renter will procure and maintain at its sole cost and expense, comprehensive general liability insurance in which the Town of _____ is an additional insured with combined single limit coverage of \$1,000,000 per occurrence and \$1,000,000 in the aggregate. Renter will furnish the Town with a certificate of insurance prior to the Event.
9. **RETURN OF SECURITY DEPOSIT.** Within three days following the Event, the Town will inspect the Facility. If Renter and guests have not caused any damage to the Facility, the Town will return the security deposit to Renter by first class mail within seven days. If Renter and guests *have* caused damage to the Facility, Town may retain all or a portion of the security deposit. If the Town retains any of the rental deposit, it will give written notice to Renter specifying the amount retained and the reasons therefore. The Town's remedies for damage shall not be limited to retention of the security deposit and the Town may pursue any additional remedies authorized by law to recover its damages or losses.
10. **ALCOHOL.** If alcohol will be furnished, served or consumed at the Event, Renter agrees to the following additional terms:
 - A. An additional security deposit of \$_____ is due at the signing of this Rental Agreement.
 - B. If Renter will furnish or serve alcohol at the Event, Renter will procure and maintain, at its sole cost and expense, liquor liability insurance in which the Town of _____ is an additional insured with

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combined single limit coverage of \$1,000,000 per occurrence and \$1,000,000 in the aggregate. Renter will furnish the Town with a certificate of such insurance prior to the Event.

C. If Renter will contract with a caterer or other third party to furnish or serve alcohol at the Event, such caterer or third party shall procure and maintain at its sole cost and expense comprehensive general liability insurance with combined single limit coverage of \$1,000,000 per occurrence and \$1,000,000 in the aggregate, and liquor liability coverage insured with combined single limit coverage of \$1,000,000 per occurrence and \$1,000,000 in the aggregate. Town and Renter shall both be named as additional insureds. Renter will furnish the Town with a certificate of such insurance prior to the Event.

D. Host liquor liability coverage may be substituted when alcohol is consumed and not sold at the Facility with the prior written approval of the Town. The Town shall be named as an additional insured on the host liquor liability insurance.

E. Renter and/or Renter's guests shall not provide alcohol to persons under the age of 21 or to persons who are already intoxicated or are apparently intoxicated. Renter and/or Renter's guests shall require proof of age of all persons prior to serving them with alcohol.

F. Renter acknowledges that the Town does not condone the irresponsible use of alcoholic beverages. It shall be Renter's sole responsibility to monitor the use of alcoholic beverages by Renter's guests.

11. **INDEMNIFICATION AND HOLD-HARMLESS.** Renter agrees to indemnify and hold the Town, its officers, agents, and employees harmless from any loss or liability which may result from claims of injury to persons or property from any cause arising out of or during the use and occupancy of the Facility by Renter and Renter's guests, agents, or employees.

12. **ASSIGNMENT.** This Rental Agreement is not assignable to any other person or entity.

13. **CANCELLATION.** The rental fee will not be refunded if notice is received less than ___ days before the Event, unless the Facility is subsequently rented for the same date. The security deposit will be refunded if the Facility is not used. In the event of a power outage or other event that may render the Facility unusable, the rental fee and security deposit will be refunded.

14. **RIGHT OF ENTRY AND TERMINATION.** The Town, its officers, agents, and employees shall have the right to enter the Facility at all times during the Event to confirm Renter's conformance to this Agreement. If the Town determines, in its sole judgment, that Renter has breached a term of this Agreement, the Town shall have the right to immediately terminate this Rental Agreement prior to the expiration of its term and prior to the conclusion of the Event without any refund to Renter.

15. **CONFORMANCE WITH THE LAW.** Renter agrees that Renter will abide by and conduct its affairs in accordance with the Town of _____ Facility Use Policy and all laws, rules, regulations, and ordinances, including those relating to alcohol consumption and noise. Renter shall not engage in or allow any illegal activity to occur at the Facility.

The parties have executed this Agreement at _____, Vermont this ____ day of _____, 20__.

TOWN OF _____
By _____
(Duly authorized Agent)

RENTER

Address: _____
Town _____ St _____ Zip _____

(Organization, if applicable)

Model Agreement Two

TOWN of _____, VERMONT
FACILITY RENTAL AGREEMENT

This Rental Agreement is dated _____, 20__ by and between the Town of _____ (the Town), and _____ [insert name] _____, (the Renter). In consideration of the mutual covenants and conditions herein, the parties agree as follows:

1. FACILITY and RENTAL PERIOD. The Town rents to Renter the _____ in _____, Vermont (the Facility) for the following Rental Period(s):

Insert the date(s) and time(s) when the Renter will be allowed to use the Facility. For example: 4/23/2008, 4/30/2008, 5/1/2008, and 5/6/2008 from 7:00 p.m. to 9:00 p.m.

2. RENT AND SECURITY DEPOSIT. Renter will pay the Town a rental fee of \$_____ at the signing of this Rental Agreement. Renter will also pay the Town a security deposit of \$_____ at the signing of this Rental Agreement.

3. OBLIGATIONS OF RENTER. At the end of each Rental Period, Renter will return the Facility in a neat, orderly and clean condition. Renter will be responsible for, and liable to, the Town for all repairs to the Facility required as a result of damage caused by Renter and Renter's guests. If Renter and guests cause damage to the Facility, Town may retain all or a portion of the security deposit. If the Town retains any of the rental deposit, it will give written notice to Renter specifying the amount retained and the reasons therefore. The Town's remedies for damage shall not be limited to retention of the security deposit and the Town may pursue any additional remedies authorized by law to recover its damages or losses.

4. OCCUPANCY. Occupancy of the Facility will be limited to ____ persons.

5. SMOKING and ALCOHOL. Smoking is prohibited in the Facility. Possession of Alcohol is prohibited in the Facility. Renter will not serve or bring alcohol into the Facility nor permit Renter's guests to serve or bring alcohol into the Facility.

6. INSURANCE. Renter will procure and maintain at its sole cost and expense, comprehensive general liability insurance in which the Town of _____ is an additional insured with combined single limit coverage of \$1,000,000 per occurrence and \$1,000,000 in the aggregate, and Renter will furnish the Town with a certificate of insurance prior to the Event.

7. INDEMNIFICATION AND HOLD-HARMLESS. Renter agrees to indemnify and hold the Town, its officers, agents, and employees harmless from any loss or liability which may result from claims of injury to persons or property from any cause arising out of or during the use and occupancy of the Facility by Renter and Renter's guests, agents, or employees.

8. ASSIGNMENT. This Rental Agreement is not assignable to any other person or entity.

9. CANCELLATION. The rental fee will not be refunded if notice is received less than ____ days before a Rental Period, unless the Facility is subsequently rented for the same date.

10. RIGHT OF ENTRY AND TERMINATION. The Town, its officers, agents, and employees shall have the right to enter the Facility at all times during the Event to confirm Renter's conformance to this Agreement. If the Town determines, in its sole judgment, that Renter has breached a term of this Agreement, the Town shall have the right

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to immediately terminate this Rental Agreement prior to the expiration of its term and prior to the conclusion of the Event without any refund to Renter.

11. CONFORMANCE WITH THE LAW. Renter agrees that Renter will abide by and conduct its affairs in accordance with the Town of _____ Facility Use Policy and all laws, rules, regulations, and ordinances, including those relating to alcohol consumption and noise. Renter shall not engage in or allow any illegal activity to occur at the Facility.

The parties have executed this Agreement at _____, Vermont this ____ day of _____, 20__.

TOWN OF _____
By _____
(Duly authorized Agent)

RENTER

Address: _____
Town _____ St__ Zip_____

(Organization, if applicable)

Model Policy

**TOWN OF _____, VERMONT
FACILITY USE POLICY**

The Town of _____ has a number of facilities that are available for use by _____ residents and members of the public. It is the intent of the Town to have the facilities used as frequently as possible, but it is the obligation of the Town to ensure that its facilities are maintained in good condition and their use and maintenance do not impose an undue financial cost on the Town's residents. This policy is intended to help ensure that the Town's facilities will be well maintained, enjoyable, accommodating and will provide a safe environment and that the Town will be fair and consistent with all parties wishing to use its facilities.

1. **FACILITIES TO WHICH THIS POLICY APPLIES.** This policy shall apply to the following municipal facilities in the Town of _____:

- 1. _____
- 2. _____
- 3. _____

2. **PRIORITY OF USE.** The Town of _____ will make these facilities available on a first come, first serve basis for individuals, groups and organizations to rent during times when the facilities are not being utilized for Town of _____ programs or by Town staff, board, commissions and committees, or Town of _____ sponsored events.

3. **HOURS OF USE.** The facilities are available for use during the following hours: _____.

4. **PROHIBITIONS.** The following uses are strictly prohibited at the facilities:

- 1. _____
- 2. _____
- 3. _____

5. **OCCUPANCY.** Occupancy of the facilities will be limited as follows:

Facility	Maximum Occupancy
_____	_____
_____	_____
_____	_____

6. **SMOKING.** Smoking is prohibited at all Town facilities.

7. **OBLIGATIONS OF USERS.** Users must return the facilities in a neat, orderly and clean condition after their use. Users will be responsible for, and liable to, the Town for all repairs to the facilities required as a result of damage caused by users.

8. **FACILITY RENTAL AGREEMENT.** Social service and community service groups, individuals, businesses, and non-profit groups wishing to use the facilities shall be required to execute a Facility Rental Agreement for each event.

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Appendix G: Authority to Regulate Use of Alcohol & Tobacco in Vermont Cities & Towns

STATE SMOKING IN PUBLIC PLACES LAW [18 V.S.A. §§ 1741 et seq]		
Allows for a municipal smoking ordinance as protective of the rights of nonsmokers as State law.	18 V.S.A. § 1746	Municipalities
LICENSING & PROHIBITION OF ALCOHOL SALES AND USE		
Local liquor control commissioners may approve/deny liquor licenses.	7 V.S.A. § 222(1)	Liquor Control Commissioner
Prohibition against issuing first or second class licenses by Liquor Control Commissioners	7 V.S.A. § 221	Municipal Vote
Prohibition against the State issuing third class licenses	7 V.S.A. § 221	Municipal Vote
Prohibitions & Restrictions on Sale & Use within a Municipality	7 V.S.A. § 161	Voter Back Petition for Municipal Vote
Suspension, Revocation, or Conditional Licensing in Compliance with Municipal Noise or Entertainment Ordinances	7 V.S.A. § 167	Liquor Control Officer with Voter Authorization
Hotel Licenses (one year or less)	9 V.S.A. § 3061(a)	Legislative Bodies
ORDINANCES (24 V.S.A. § 1973)		
Regulate, license, tax, or prohibit circuses, carnivals, and menageries and all plays, concerts, entertainments, or exhibitions of any kind for which money is received.	24 V.S.A. § 2291(11)	[Legislative Bodies Subject to Voter Backed Permissive Referendum
Define what constitutes a public nuisance, and provide procedures, take action for its abatement/removal as the public health, safety, or welfare requires.	24 V.S.A. § 2291(14)	[Legislative Bodies Subject to Voter Backed Permissive Referendum
Regulate or prohibit possession of open or unsealed containers of alcoholic beverages in public places.	Regulate or prohibit possession of open or unsealed containers of alcoholic beverages in public places.	[Legislative Bodies Subject to Voter Backed Permissive Referendum
Regulate or prohibit consumption of alcoholic beverages in public places.	24 V.S.A. § 2291(18)	[Legislative Bodies Subject to Voter Backed Permissive Referendum
GENERAL AUTHORITY TO REGULATE MUNICIPAL ENTITIES [(24 V.S.A. § 4442(c))]		

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ZONING BY-LAWS		
Regulate land development in conformance with the municipal plan.	24 V.S.A. § 4411(a)	Municipal Planning Commissions/Legislative Bodies/Voters
Regulate dimensions, location, erection, construction, repair, maintenance, alteration, razing, removal, and use of structures.	24 V.S.A. § 4411(a)(2)	Municipal Planning Commissions/Legislative Bodies/Voters
Regulate the expansion, reduction, or elimination of certain nonconforming uses, structures, lots, or parcels.	24 V.S.A. § 4411(b)(2)	Municipal Planning Commissions/Legislative Bodies/Voters
Condition approval of certain uses upon compliance with general (State) and specific (municipal) standards.	24 V.S.A. § 4414(3)	Municipal Planning Commissions/Legislative Bodies/Voters
CHARTERS		
Municipal Governance Charters Proposing/Adopting/Repealing	17 V.S.A. § 2645(a)(5)	Subject to Approval by Legislative Bodies, Municipal Voters, and Vermont Legislature
FACILITIES USE POLICIES		
General supervisory affairs of the municipality.	24 V.S.A. § 872	Legislative Bodies
TAXATION		
Qualifying municipalities may impose a 1% alcoholic beverages tax.	24 V.S.A. § 138	Subject to Approval by Legislative Bodies and Municipal Voters

Vermont Municipal Regulation of Alcohol and Tobacco and Alcohol and Tobacco Advertising

Resource Materials

Vermont Statutes Annotated.

McQuillin *The Law of Municipal Corporations*, 6A McQuillin Mun. Corp. § 24.58 *Generally; What Constitutes Nuisance* (3rd ed.) (1997).

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Micah Berman, Marlo Miura, & John Bergstresser, *Tobacco Product Display Bans*, Center for Public Health and Tobacco Policy at New England Law, Boston (2010).

Heather Wooten, Ian McLaughlin, Lisa Chen, Christine Fry, Catherine Mongeon, & Samantha Graff, *Zoning and Licensing to Regulate The Retail Environment And Achieve Public Health Goals*, 5:65, *Duke Forum For Law & Social Change*. 65, (2013).

James H. Douglas, Secretary of State & Paul S. Gillies, Deputy Secretary of State, *A Book of Opinions* (Vol. 1), Office of the Secretary of State of Vermont (1992).

James F. Mosher, JD & Elena N. Cohen, JD, *State Laws to Reduce the Impact of Alcohol Marketing on Youth: Current Status and Model Policies*, Center on Alcohol Marketing and Youth, Johns Hopkins Bloomberg School of Public Health, Baltimore. (2012).

Todd D. Fraley, JD, Kendall Stagg, JD, Logan Parker, JD, Joel J. Africk, JD, *Tobacco Advertising Restrictions-Risky Policies with Noble Intentions: Lessons learned from Lorillard v. Reilly and other commercial speech jurisprudence*, Tobacco White Paper Series, Respiratory Health Association (2014).

Arlen W. Langvardt, *Tobacco Advertising and the First Amendment: Striking the Right Balance*, 5 *Wm. & Mary Bus. L. Rev.* 2 (2013).

Laura Harrison, *44 Liquormart, Inc. v. Rhode Island: The Supreme Court Overturns a Ban on Liquor Price Advertising*, 48 *Mercer L. Rev.* 931 (1997).

Note, *Free Speech Doctrine After Reed v. Town of Gilbert*, 129 *Harv. L. Rev.* 1981 (2016).

Gregory Duggan

From: Evan Teich
Sent: Thursday, June 4, 2020 12:00 PM
To: Tim Shea; Robin Pierce; Andrew Brown
Cc: Gregory Duggan
Subject: RE: CVE annual fee

Tim, we have a full agenda on the 9th but I will put this request on their next agenda.

From: Tim Shea <TShea@cvexpo.org>
Sent: Thursday, June 4, 2020 11:56 AM
To: Robin Pierce <robin@essexjunction.org>; Evan Teich <eteich@essex.org>; Andrew Brown <abrown@essexjunction.org>
Subject: RE: CVE annual fee

CAUTION: EXTERNAL MAIL. DO NOT CLICK ON LINKS OR OPEN ATTACHMENTS YOU DO NOT TRUST

Thank you Robin. One item to clarify, each of the three high schools are paying CVE a \$1,000 facility fee (pennies on the dollar compared to what we would typically charge) as well as covering our labor cost for the parking staff required for the event.

From: Robin Pierce <robin@essexjunction.org>
Sent: Thursday, June 4, 2020 10:50 AM
To: Tim Shea <TShea@cvexpo.org>; Evan Teich <eteich@essex.org>; Andrew Brown <abrown@essexjunction.org>
Subject: RE: CVE annual fee

Something I would like to add to this is that CVE has stepped up for our and the wider community at this time. They made their site available for virus testing with no profit coming from that magnanimous step. Now they will be hosting the EHS graduation with no funds at all coming from that accommodation. With no income in the foreseeable future this seems like a very reasonable ask for this community resource, which (by the way) is still open for people to walk, run, etc., at no charge.

Thank you,

Robin.

Robin Pierce

Community Development Director
Village of Essex Junction

From: Tim Shea [<mailto:TShea@cvexpo.org>]
Sent: Thursday, June 4, 2020 10:42 AM
To: Evan Teich <eteich@essex.org>; Robin Pierce <robin@essexjunction.org>; Andrew Brown <abrown@essexjunction.org>
Subject: CVE annual fee

While I know we have talked about this, I would like to formally request that our annual fee of \$15,000 be waived for 2020. Tomorrow we will lay off 8 of our 14 person staff with no date set for their return. CVE is literally in survival mode at this point.

Thank you for your consideration.

Tim

Timothy P. Shea
Executive Director
Champlain Valley Exposition
105 Pearl Street, PO Box 209
Essex Junction, VT 05453
O (802) 878-5545 ext. 36
C (802) 238-7017
www.cvexpo.org



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VILLAGE OF ESSEX JUNCTION
TRUSTEES
REGULAR MEETING AGENDA

Online
Essex Junction, VT 05452
Wednesday, June 17, 2020
6:00 PM

E-mail: manager@essexjunction.org

www.essexjunction.org

Phone: (802) 878-6951

Due to the Covid-19 pandemic, this meeting will be held remotely. Available options to watch or join the meeting:

- The meeting will be live-streamed on Town Meeting TV.
Join Microsoft Teams Meeting. Depending on your browser, you may need to call in for audio (below).
Join via conference call (audio only): (802) 377-3784 | Conference ID: 319 950 697#
For the purpose of recording minutes, you will be asked to provide your first and last name.
When listening to the meeting, please keep your phone or computer on "mute" as to prevent interruptions during the meeting. For agenda items when it is appropriate for the public to speak, please unmute your phone or computer and introduce yourself before requesting the floor from the Chair/President.

- CALL TO ORDER [6:00 PM]
AGENDA ADDITIONS/CHANGES
APPROVE AGENDA
PUBLIC TO BE HEARD
a. Comments from Public on Items Not on Agenda
PUBLIC HEARING
a. Presentation of Fiscal Year 2021 Proposed Utility Rates—Sarah Macy
b. Public Hearing on Fiscal Year 2021 Proposed Utility Rates
BUSINESS ITEMS
a. Consider budget adjustments to Fiscal Year 2021 Water, Wastewater, Sanitation budget; Warn second Public Hearing— Sarah Macy
b. Continued discussion and possible action on support for local businesses due to COVID-19—Robin Pierce
c. Review draft merger charter to make changes and fix areas of concern—Evan Teich
CONSENT ITEMS
a. Approve minutes: June 1, 2020
READING FILE
a. Board Member Comments
EXECUTIVE SESSION
a. *An executive session is not anticipated
ADJOURN

This agenda is available in alternative formats upon request. Meetings of the Trustees, like all programs and activities of the Village of Essex Junction, are accessible to people with disabilities. For information on accessibility or this agenda, call the Unified Manager's office at 878-6951.

Certification: 06/12/2020
Date Posted

Initials (handwritten signature)

VILLAGE OF ESSEX JUNCTION TRUSTEES
SPECIAL MEETING MINUTES
June 17, 2020

TRUSTEES: Andrew Brown, President; George Tyler, Vice President; Raj Chawla; Dan Kerin; Amber Thibeault.

ADMINISTRATION and STAFF: Evan Teich, Unified Manager; Greg Duggan, Deputy Manager; Sarah Macy, Finance Director/Assistant Manager; Robin Pierce, Community Development Director.

OTHERS PRESENT: Ken Signorello, Irene Wrenner.

1. CALL TO ORDER

Andrew Brown called the meeting of the Village of Essex Junction Trustees to order at 6:00 PM.

2. AGENDA ADDITIONS/CHANGES

Deputy Manager Duggan requested the inclusion of additional materials for Business Item 6c (Review Draft Charter and fix areas of concern), including comments from the Trustees, George Tyler’s proposed edits to the charter, and a study from the Vermont League of Cities and Towns regarding municipal regulation of alcohol and tobacco. He noted a request from Champlain Valley Expo to consider waiving \$15,000 annual fee to the Village, and proposed it be added as Business Item 6d.

3. AGENDA APPROVAL

DAN KERIN made a motion, and GEORGE TYLER seconded, that the Board of Trustees approve the agenda as amended. The motion passed 5-0.

4. PUBLIC TO BE HEARD

a. Comments from public on items not on agenda

None at this time.

5. PUBLIC HEARING

a. Presentation of Fiscal Year 2021 Proposed Utility Rates

Finance Director Sarah Macy presented information for this item, noting that the presentation is based on the approved enterprise fund budget. She summarized this year’s rates and the increase over last year, and next year’s rates and the increase over this year. She noted that the Fiscal Year 2021 proposed combined utility rate increase over Fiscal Year 2020 is 6.9%; it is higher than the average annual increase but is lower than last year’s increase. She noted that the water fund rate will increase in 2021 by 5.9%, the wastewater treatment rate will increase by 9.9%, and the sanitation rate will increase by 4.9%. She also recommended that the Trustees approve a new type of rate called an interim utility bill fee, which is common in surrounding communities, and said the cost of this fee is currently borne by all users through the standard user rate. She also reviewed the large water user rate, which is only currently paid by GLOBALFOUNDRIES, and that it will increase in FY21 by 13.3%.

Mr. Brown asked how the interim utility bill fee of \$35 was calculated and whether it aligns with the Town’s rate for this fee. Ms. Macy replied that it is comprised of a \$25 fee that is charged when a line is connected or disconnected and an estimated labor cost of \$10 for the time and effort to produce the bill. She added that St. Albans uses this methodology and amount.

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b. Public Hearing on Fiscal Year 2021 Proposed Utility Rates

Public hearing closed at 6:20 PM.

6. BUSINESS ITEMS

a. Consider budget adjustments to Fiscal Year 2021 Water, Wastewater, Sanitation budget; Warn second Public Hearing

GEORGE TYLER made a motion, and AMBER THIBEAULT seconded, to warn the second of two public hearings on the proposed Fiscal Year 2021 Utility Rates for Tuesday June 23, 2020. The motion passed 5-0.

b. Continued discussion and possible action on support for local businesses due to COVID-19

Community Development Director Pierce began the discussion of this item, outlining a proposal to support local businesses through a voucher program and event. He proposed that residents would receive one \$10 voucher per household to be redeemed at local businesses in the Village Center during a designated time period, that residents would need to show proof of residency, and vendors would in turn need to demonstrate proof of purchase to redeem the vouchers with the Village. He tentatively proposed Friday, July 10 and Saturday, July 11 from 3:00-9:00 PM for the dates of this voucher event.

Mr. Brown expressed concern that a one-weekend event during a small time window could encourage crowding in retail and dining spaces and suggested spreading the event out during an entire week or for a longer time each day. Ms. Thibeault asked whether staff had the capacity to both distribute vouchers to residents and reimburse vendors for spent vouchers after the event. The Trustees discussed which businesses would qualify for the voucher program. Mr. Teich suggested postponing the dates for several weeks in order to get the word out about the event to increase potential participation among vendors and residents.

GEORGE TYLER made a motion, and RAJ CHAWLA seconded, that the Trustees give Staff approval to initiate the Open and Outside initiative to give away 1,000 vouchers to be spent on Village business with a redeemable value of \$10 for up to \$10,000 from the Village economic development fund, defer to staff to select the specific dates and timing of the program, waive the normal Permit fee of \$50 during this event, and work with the Selectboard to confirm that they are willing to waive the recording fee for this event. The motion passed 5-0.

Mr. Tyler additionally noted that many businesses in the Village were receptive to the idea of having additional outdoor seating areas while patrons wait to enter their establishments (due to COVID-19 related capacity limits), and suggested that staff pursue purchasing plastic-coated steel mesh tables and umbrellas for this. He noted that it would help boost business in the Village. Mr. Teich noted that per the Governor’s orders, tables would need to be cleaned after every use. Mr. Chawla said he would want to ensure that the tables would not be used as smoking areas by patrons. Mr. Kerin suggested that the Village could rent tables from Champlain Valley Expo.

GEORGE TYLER made a motion, and RAJ CHAWLA seconded, to allocate an amount not to exceed \$12,000 for staff to provide outdoor seating and place-making supplies for the Village Center District, drawing on the Village’s penny on dollar for economic development. The motion passed 5-0.

c. Review draft merger charter to make changes and fix areas of concern

The Trustees reviewed the draft merger charter by section and outlined their respective edits, comments, and concerns. Areas of focus included the transition districts and timing of the transition period, the timing and formation of an interim governing body and how that relates to elections and budgetary timelines for the Town of Essex and Village of Essex Junction, discussion of community development and the role of a planning commission, and reapportionment. The Trustees agreed that Attorney Dan Richardson should be consulted before proceeding with language in several sections of the draft merger charter.

Irene Wrenner commented on the unnecessary formation of an interim governing body and how instead the Town and Village could emulate the school district when they merged a number of school boards.

d. Consider request from Champlain Valley Expo (CVE) to waive the \$15,000 annual fee

Mr. Teich said that staff had received a request from CVE asking that the Village consider waiving the \$15,000 fee that is due annually to the Village, adding that a main reason for this request is a lack of revenue due to not being able to hold events in the spring and summer months. He noted that CVE had hosted a COVID-19 testing site and did not charge the hospital for it, as well as a COVID-19 surge site, for which they would only be reimbursed for expenses.

Mr. Brown asked if the Trustees would be in favor of revisiting this request at the end of the calendar year and consider waiving the fee if finances have not turned around by then. Ms. Thibeault suggested a forbearance instead of a waiver of the fee, citing concerns that a waiver could set a precedent for tax relief. Mr. Tyler noted that the fee is not a tax. Mr. Chawla said that the scale of benefit that CVE has provided the community during the COVID-19 crisis warrants the granting of this waiver.

GEORGE TYLER made a motion, and DAN KERIN seconded, to waive the annual fee of \$15,000 from Champlain Valley Expo to the Village for the 2020 calendar year. VOTING (by roll call) – Andrew Brown – aye, Raj Chawla -aye, Amber Thibeault – nay, Dan Kerin – aye, George Tyler – aye. The motion passed 4-1.

7. CONSENT ITEMS:

a. Approve minutes: June 1, 2020

- Blank for last name of DEUTSCH.

GEORGE TYLER made motion, and RAJ CHAWLA seconded, that the Trustees approve the Consent Agenda with the following comments:

- Add “Deutsch” as Erna’s last name on Line 13 of June 1, 2020 minutes.

The motion passed 5-0.

8. READING FILE:

a. Board Member Comments

- Mr. Chawla asked about the status of the face covering resolution. Ms. Thibeault replied that it had been posted to the Village website.
- Mr. Kerin requested that the Trustees review the final resolution documents prior to posting to ensure consistent messaging with any related resolutions for the Town outside the Village.

VILLAGE TRUSTEES

June 17, 2020

145 **9. EXECUTIVE SESSION:**
146 **a. *An executive session is not anticipated**

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148 **10. ADJOURN:**
149 **AMBER THIBEAULT made a motion, and RAJ CHAWLA seconded, that the Trustees adjourn the**
150 **meeting. The motion passed 5-0 at 9:13 PM.**

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153 Respectfully Submitted,
154 Amy Coonradt
155 Recording Secretary
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