

From: Garrett Baxter [<mailto:gbaxter@vlct.org>]

Sent: Monday, August 10, 2020 12:58 PM

To: Dean Bloch <Dean@townofcharlotte.com>

Subject: RE: Questions on voting a petitioned amendment to the Land Use Regulations

Good afternoon Dean,

I've copied your questions below. My responses immediately follow.

1. *Is the Selectboard REQUIRED to place an article before voters for a petitioned amendment (Charlotte adopts amendments to the Land Use Regulations and Town Plan via Australian ballot voting)? Or can the Selectboard essentially kill the petitioned amendment by not holding a vote on it?*

Outside consideration of the Town of Charlotte's governance charter, the Selectboard is not legally mandated to call a town meeting for the purpose of acting upon a proposed zoning amendment supported by a valid, voter backed petition; at least not initially. The law of general applicability governing petitioned amendments to proposed bylaw amendments states that all a valid, voter backed petition does with respect to a proposed bylaw amendment is to force the start of the prescribed statutory bylaw amendment process. It does not however compel its adoption or even placement by the Selectboard before the voters for a vote. "However, if the proposed amendment or repeal of a bylaw is supported by a petition signed by not less than five percent of the voters of the municipality, the commission shall correct any technical deficiency and shall, without otherwise changing the amendment or repeal, promptly proceed in accordance with subsections (c) through (g) of this section, as if it had been prepared by the commission." 24 V.S.A. § 4441(b).

It is, again at least initially, in the discretion of the Selectboard to determine if and when a town-wide vote on such a proposal is to be held. If the Selectboard decides not to place the petitioned amendment before the voters, it will be considered disapproved unless five percent of the voters submit a separate petition within 60 days of the one-year anniversary date of the final hearing of the Planning Commission on the amendment, in which case a town meeting then must be warned for the purpose of acting on the proposed amendment by Australian ballot. 24 V.S.A. § 4442(g).

So ultimately, the Selectboard can be forced to call a town meeting for the purpose of voting on a proposed bylaw amendment, but that is not accomplished with the submission of the first valid, voter backed petition.

Also keep in mind that the process that has thus far been described is complicated further with the passage of the temporary law Act 92 which gives the Selectboard the ability to delay this prescribed legislative hearing process. The following excerpt is from page 11 of our Town Operations COVID-19 FAQs which is available on our website at:

https://www.vlct.org/sites/default/files/documents/Resource/Town%20Operations%20COVID-19%20FAQs_3.pdf

Can we postpone public hearings required to be held to adopt/amend/repeal town plans and zoning bylaws?

Yes. Section 8 of Act 92 explicitly allows towns to extend these deadlines indefinitely during the declared state of emergency. Specifically, the temporary law states, "(d)uring a declared state of emergency under 20 V.S.A. chapter 1 due to COVID-19, a municipal corporation shall be permitted to extend any deadline applicable to municipal corporations, provided that the deadline does not relate to a State license, permit, program, or plan subject to subsection (a) of this section." An example of such a deadline includes the timeframe by which a selectboard must hold a public hearing on a proposed town plan or amendment. State law ordinarily would require a selectboard to hold a public hearing on a proposed town plan or amendment

not less than 30 days, nor more than 120 days from the date it is submitted by the planning commission. We do not recommend holding a public hearing during the public health emergency amid the Order's and guidance's restrictions on public gatherings. Instead, we recommend that the legislative body, at a duly warned meeting, extend the hearing deadlines by a certain amount of time. If the time period ends up being insufficient, the law allows further extension or waiver of these deadlines during the declared state of emergency. This provision allows towns to hold off on warning hearings to adopt, amend, or repeal a town plan or bylaw amendments without running afoul of statutory deadlines for noncompliance. However, if action is taken during the declared state of emergency, it appears as though the regular notice requirements (e.g. 24 V.S.A. § 4444) will still apply.

The Selectboard would also ultimately have the authority to delay the calling of a town meeting vote on a proposed bylaw amendment if a second valid, voter backed petition were received within the requisite 60-day timeframe described above, if submitted during the duration of the existing pandemic. The VT Secretary of State has issued a directive that authorizes municipalities to cancel any election (this would include a special town election called by petition) and to hold it at a different time in the year 2020 as determined by the Selectboard: <https://sos.vermont.gov/secretary-s-desk/commentary/guidance-for-postponing-upcoming-local-elections/>

2. *Assuming that the Selectboard puts the amendment to voters (either because it's required or because the board does it voluntarily), can the Selectboard change the amendment from what was petitioned—or is the Selectboard REQUIRED to put the amendment to voters exactly as it was petitioned?*

Yes, the Selectboard can change the wording of any proposed zoning amendment. Again, outside consideration of any governance charter language that the Town may have to the contrary, the law of general applicability governing this issue clearly vests with the Selectboard the discretionary authority to make changes to any proposed zoning bylaw amendment. The law makes no distinction in this regard between a proposed zoning bylaw amendment support or opposed by the Planning Commission or one supported by a valid, voter backed petition. The controlling provision of law reads in relevant part, “(t)he legislative body may make minor changes to the proposed bylaw, amendment, or repeal, but shall not do so less than 14 days prior to the final public hearing. If the legislative body at any time makes substantial changes in the concept, meaning, or extent of the proposed bylaw, amendment, or repeal, it shall warn a new public hearing or hearings under subsection (a) of this section. If any part of the proposal is changed, the legislative body at least 10 days prior to the hearing shall file a copy of the changed proposal with the clerk of the municipality and with the planning commission. The planning commission shall amend the report prepared pursuant to subsection 4441(c) of this title to reflect the changes made by the legislative body and shall submit that amended report to the legislative body at or prior to the public hearing.” 24 V.S.A. § 4442(b).

I hope you find this information useful. All the best.

Sincerely,

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