

Ordinance vs. Bylaw

What is the difference between a municipal policy and an ordinance?

A policy is a course of action, guiding principle, procedure, or strategy that is adopted by a municipal public body (e.g., a selectboard or board of library trustees). Policies are executive in nature and are oriented inwards to guide internal decision-making processes. Generally, policies apply to employees, town facilities or the public body itself. A policy is designed to influence and determine decisions in the course of conducting certain municipal affairs. Policies should establish clear-cut, orderly, and systematic methods for handling certain administrative duties and internal town operations. They should be flexible enough to meet changing situations and conditions, yet provide enough consistency and continuity in making decisions to ensure predictability. Although policies generally do not have regulatory enforcement authority as compared to ordinances, policies nevertheless are useful in that they clearly define a municipality's standards and set reasonable expectations for the applicable municipal topic.

An ordinance is a legislative act by the legislative body of a municipality (selectboard, council, aldermen, trustees). Black's Law Dictionary defines an ordinance as "[a]n authoritative law or decree; specif[ically], a municipal regulation, esp[ecially] one that forbids or restricts an activity." Black's Law Dictionary (10th ed. 2014). In contrast to a policy which governs internal operations, an ordinance is "an expression of municipal will affecting the conduct of the inhabitants generally, or of a number of them under some general designation." City of Barre v. Perry & Scribner, 82 Vt. 301 (1909). Municipal ordinances carry the state's authority and have the same effect within the municipality's limits as a state statute. Once adopted according to statutory process, they become legally enforceable local laws. A municipal ordinance is designated either as a civil or criminal offense and may carry a fine or penalty of up to \$800. A civil ordinance is generally enforced in the Vermont Judicial Bureau, the court that has statewide jurisdiction over civil violations.

<https://www.vlct.org/resource/quick-guide-ordinance-adoption-amendment-or-repeal> (VLCT News 2018-04)

- Ordinance: Per 24 V.S.A. Chapter 59 an ordinance **must**:
 - Be designated as either criminal or civil, but not both;
 - § 1972. Procedure: (a)(1) The legislative body of a municipality desiring to adopt an ordinance or rule may adopt it subject to the petition set forth in section 1973 of this title and shall cause it to be entered in the minutes of the municipality and posted in at least five conspicuous places within the municipality. The

legislative body shall arrange for one formal publication of the ordinance or rule or a concise summary thereof in a newspaper circulating in the municipality on a day not more than 14 days following the date when the proposed provision is so adopted. Information included in the publication shall be the name of the municipality; the name of the municipality's website, if the municipality actively updates its website on a regular basis; the title or subject of the ordinance or rule; the name, telephone number, and mailing address of a municipal official designated to answer questions and receive comments on the proposal; and where the full text may be examined. The same notice shall explain citizens' rights to petition for a vote on the ordinance or rule at an annual or special meeting as provided in section 1973 of this title.

- (2) Unless a petition is filed in accordance with section 1973 of this title, the ordinance or rule shall become effective 60 days after the date of its adoption, or at such time following the expiration of 60 days from the date of its adoption as is determined by the legislative body. If a petition is filed in accordance with section 1973 of this title, the taking effect of the ordinance or rule shall be governed by subsection 1973(e) of this title.
 - (b) All ordinances and rules adopted by a municipality shall be recorded in the records of the municipality.
- § 1973: An ordinance **may be** disapproved by a vote of a majority of the qualified voters at an annual or special meeting duly warned for the purpose
 - (b) A petition for a vote on the question of disapproving an ordinance or rule shall be signed by not less than five per cent of the qualified voters of the municipality, and presented to the legislative body or the clerk of the municipality within 44 days following the date of adoption of the ordinance or rule by the legislative body.
 - (c) When a petition is submitted in accordance with subsection (b) of this section, the legislative body shall call a special meeting within 60 days from the date of receipt of the petition, or include an article in the warning for the next annual meeting of the municipality if the annual meeting falls within the 60-day period, to determine whether the voters will disapprove the ordinance or rule.
 - (d) Not less than two copies of the ordinance or rule shall be posted at each polling place during the hours of voting, and copies thereof made available to voters at the polls on request. It shall be sufficient to refer to the ordinance or rule in the warning by title.
 - (e) If a petition for an annual or a special meeting is duly submitted in accordance with this section, to determine whether an ordinance or rule shall be disapproved by the voters of the municipality, the ordinance or rule shall take effect on the conclusion of the meeting, or at such later date as is specified in the ordinance or rule, unless a majority of the

qualified voters voting on the question at the meeting vote to disapprove the ordinance or rule in which event it shall not take effect.

- § 1975 Evidence of Adoption: A certificate of the clerk of a municipality showing the publication, posting, recording, and adoption of an ordinance or rule, or any of the foregoing, shall be presumptive evidence of the facts so stated in any action or proceeding in court or before any board, commission, or other tribunal.
- § 1976 Amendments & Repeals: An ordinance or rule adopted in accordance with the procedures provided for in this chapter may be amended or repealed in accordance with the procedure herein set forth relating to adoption of ordinances and rules, and the provisions of this chapter, including the right of petition and referendum contained in section 1973 of this title, shall apply to the amendment or repeal of an ordinance or rule adopted under this chapter as well as to its enactment.
- Bylaw: Per 24 V.S.A. § 4442 a bylaw **must**:
 - Have a public hearing “not less than 15 nor more than 120 days after a proposed bylaw, amendment, or repeal is submitted to the legislative body” of which there should be “one or more public hearings, after public notice.” Additionally, “Failure to hold a hearing within the 120 days shall not invalidate the adoption of the bylaw or amendment or the validity of any repeal.”
 - No amendments or changes may be made to said proposal “less than 14 days prior to the final public hearing”.
 - If any “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.” And;
 - “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.”
 - It must be adopted by a majority of the legislative body.
 - Will be effective 21 days after adoption **unless** “by action of the legislative body, the bylaw, bylaw amendment, or bylaw repeal is warned for adoption by the municipality by Australian ballot at a special or regular meeting of the municipality.”
 - However, “Notwithstanding subdivision (c)(1) of this section, a vote by the legislative body on a bylaw, amendment, or repeal shall not take effect if five percent of the voters of the municipality petition for a meeting of the municipality to consider the bylaw, amendment, or repeal, and the petition is filed within 20 days of the vote. In that case, a meeting of the municipality shall be duly warned for the purpose of acting by Australian ballot upon the bylaw, amendment, or repeal.”

- Finally, a legislative body must act; “If the proposed bylaw, amendment, or repeal is not approved or rejected under subsection (c) of this section within one year of the date of the final hearing of the planning commission, it shall be considered disapproved unless five percent of the voters of the municipality petition for a meeting of the municipality to consider the bylaw, amendment, or repeal, and the petition is filed within 60 days of the end of that year. In that case, a meeting of the municipality shall be duly warned for the purpose of acting upon the bylaw, amendment, or repeal by Australian ballot.”