

ASK THE LEAGUE, DECEMBER 2015

How is a municipal ordinance enforced?

Once adopted according to statutory process, an ordinance has the force and effect of a local law. A municipality must designate each of its ordinances (except parking) as either a civil or a criminal offense. 24 V.S.A. §§ 1974, 1974a. Parking ordinances are unique in that they are designated by law as civil offenses but they must be subject to a locally-established administrative appeal process before they may be enforced in Superior Court. 4 V.S.A. § 437(11).

The violation of a criminal ordinance is a misdemeanor and is prosecuted in the Criminal Division of Superior Court. 24 V.S.A. § 1974. A criminal ordinance can provide for a fine of up to \$500 or imprisonment for up to one year. Criminal ordinances are best suited to municipalities with law enforcement officers and a municipal attorney to prosecute violations.

The vast majority of municipal ordinances in Vermont are civil rather than criminal violations. Civil ordinances are prosecuted in the Vermont Judicial Bureau (formerly known as “traffic court”) or in Superior Court. 24 V.S.A. § 1974a. Using the Judicial Bureau process is generally less expensive and less time-consuming than either the criminal or civil court process and does not require the assistance of an attorney.

A civil ordinance may impose a maximum penalty of \$800, and may also designate a “waiver fee,” which is a fee that is paid if a person admits or does not contest a ticket, thereby waiving the right to a hearing. 24 V.S.A. § 1974a. When setting the penalty and waiver amounts, the legislative body should set amounts that will be sufficient to deter violation of the ordinance. Subsequent violations of the same ordinance warrant an increased penalty and waiver fee. Fines are punitive in nature and, therefore, the amount of the penalty does not have to correspond to the costs incurred by the municipality in enforcing the ordinance. Penalties that are too low will not significantly discourage future offenses.

A civil ordinance enforceable by the Judicial Bureau must identify a person or persons who are authorized to issue tickets for violation of that ordinance. V.R.C.P. 80.6. These are so-called “issuing officers.” This designation does not confer any law enforcement authority other than the ability to issue tickets; it does not confer the authority to stop or search a person, nor does it confer the authority to seize property (including animals).

The selectboard should also decide whether the person who issues tickets will also have the authority to represent the municipality in hearings before the Judicial Bureau. If the person representing the municipality is not the person who issued the ticket, he or she will likely need to call the issuing officer as a witness at the hearing.

Pre-printed “Vermont Municipal Violation Complaints” are available in booklets from the Vermont Judicial Bureau, P.O. Box 607, White River Junction, VT 05001 or 802-295-8869. When the issuing officer wishes to enforce a local ordinance, he or she will fill out a ticket, provide two copies to the alleged violator, and retain two copies, one of which is sent to the Judicial Bureau. V.R.C.P. 80.6. A

ticket can be served in person or by mail. The law does not require it, but we recommend certified mail, return receipt requested.

A violator can respond to a ticket/complaint in one of four ways:

- **Admit** and pay the waiver fee.
- **Not contest** the charge and pay the waiver fee.
- **Deny** the offense and request a hearing.
- **Fail to respond** within the requisite 20 days, resulting in a default judgment. In such case, the violator is ordered to pay the full amount of the fine (rather than the waiver fee).

If the violator pays the waiver fee, the money collected by the Judicial Bureau is sent to the municipality, minus an administrative fee which is retained by the Bureau for administrative expenses.

If the violator asks for a hearing, it will be held by a hearing officer assigned by the Judicial Bureau. Unlike in criminal court, there is no prosecutor assigned to Judicial Bureau cases. Instead, the officer appearing for the municipality presents evidence and questions witnesses, if there are any. The burden of proof is on the municipality and the violation must be proven by “clear and convincing evidence.” If either the defendant or the municipality is unhappy with the outcome of the hearing at the bureau, an appeal may be taken to Superior Court. V.R.C.P. 80.6(i).

A hearing officer may dismiss a ticket if it is illegible or is not completely filled out. V.R.C.P. 80.6(c)(5). A ticket may also be dismissed if the municipality fails to prove that the ordinance was duly adopted. For this reason, we recommend providing the hearing officer with a certified copy of the ordinance as well as the minutes from the selectboard meeting when it was adopted.

If a fine is imposed, the defendant has 30 days in which to pay. If the defendant fails to pay the fine, the Judicial Bureau sends a nonpayment report to the municipality. All civil remedies for collection of a judgment are then available, including attaching wages or property, filing and foreclosure of a judgment lien, initiating a small claims court action, or filing a civil contempt action. 24 V.S.A. § 1981. The Judicial Bureau may also refer a case to a collection agency.

If requested by the municipality, the Judicial Bureau has the authority to order that a violation cease. 24 V.S.A. §1974a(c). However, the Judicial Bureau cannot otherwise grant injunctive relief; it cannot issue a court order commanding or preventing an action. If the municipality seeks injunctive relief, it needs to work with an attorney to bring an enforcement action directly in Superior Court.

The above is only an overview of the ordinance enforcement process. The staff of the Municipal Assistance Center can answer specific questions about drafting and enforcing ordinances. In addition, the staff attorneys are available to provide technical review and revision of existing municipal ordinances. Please email us at info@vlct.org or call us at 800-649-7915 for more information.

Sarah Jarvis, Staff Attorney II
VLCT Municipal Assistance Center