

# VLCT SPRING SELECTBOARD INSTITUTE

## Effective Ordinance Drafting and Adoption

### [APPENDIX H VLCT MODEL DOGS [AND WOLF-HYBRIDS] ORDINANCE

**SECTION 1. AUTHORITY.** This ordinance is adopted by the selectboard of the Town of \_\_\_\_\_ under authority of 20 V.S.A. § 3549, 24 V.S.A. §§ 2291 (10), (14), and (15), and 24 V.S.A. Chapter 59.

**SECTION 2. PURPOSE.** It is the purpose of this ordinance to regulate the keeping of dogs [and wolf hybrids] and to provide for their leashing, muzzling, restraint, impoundment and destruction and their running at large, so as to protect the public health and safety of the Town and the quiet enjoyment of its residents' homes and properties.



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

# Some Items We Won't Cover (*At Least Not Today*)

- Zoning and subdivision bylaws (i.e. land use regulations). They have their own statutorily prescribed adoption process. See 24 V.S.A. §§ 4441, 4442.
- Parking ordinances. They have their own local enforcement process.
- Enforcing municipal ordinances.



# What is an Ordinance?

- An ordinance is legislative in nature and is “an expression of the municipal will, affecting the conduct of the inhabitants generally, or of a number of them under some general designation.”

*City of Barre v. Perry & Schribner,*  
82 Vt. 301 (1909).



# What is an Ordinance?

- An ordinance is a “a local law of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform, and permanent rules of conduct, relating to the corporate affairs of the municipality.”

McQuillin The Law of Municipal Corporations, 6A McQuillin Mun. Corp. § 15.1 Definitions (3rd ed.) (1997).



# What is an Ordinance?

- A Selectboard can enact ordinances to regulate:
  - Vehicles (speed limits/parking) and pedestrian traffic;
  - Junkyards;
  - Domestic pets and animals/animal cruelty;
  - Storage/dumping/burning of solid waste;
  - Public nuisances (e.g. loitering, noise, etc.);
  - Possession/consumption of open alcoholic beverages;
  - Water and sewer capacity and usage;
  - Dangerous/vacant buildings;
  - ATV/snowmobile operation;
  - Etx.



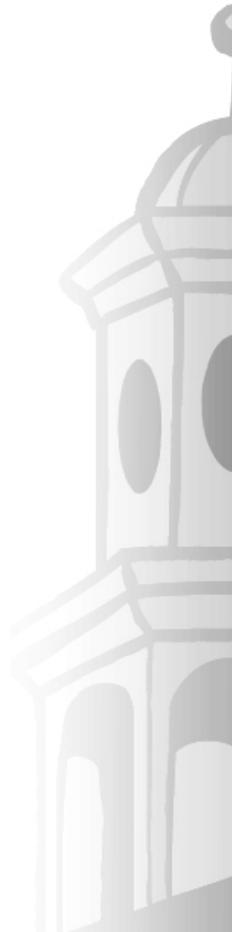
# Ordinance Adoption Strategies

- As the legislative branch of the town, the selectboard should retain close control over the ordinance drafting process.

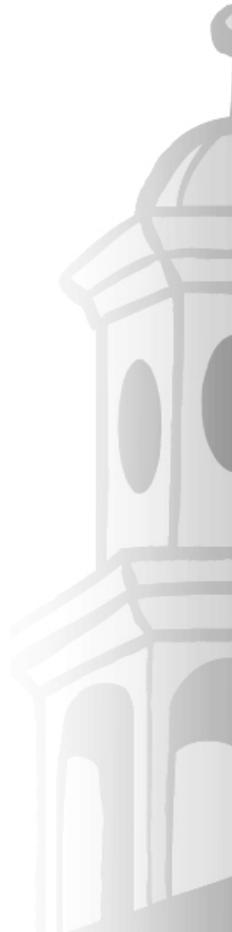


# Ordinance Adoption Strategies

- Delegation of the drafting responsibility to a citizen group or committee rarely results in a satisfactory product.



# Questions



# How to Draft an Ordinance

## Requisites of a Valid Ordinance

### **A valid ordinance must (drafting checklist)**

1. Be adopted by the majority of the total membership of a Selectboard at a duly warned regular or special meeting as an agenda item during the course of an open meeting;
2. Emanate from authority granted by the State;
3. Comply with State and Federal Constitutional law;



# How to Draft an Ordinance

## Requisites of a Valid Ordinance

### A valid ordinance must (drafting checklist)

4. Bear a rational relationship to a legitimate governmental purpose;
5. Is definite and certain as to the proscribed conduct;
6. Be enacted in the manner prescribed by State law.



# How to Draft an Ordinance

## The “Authority” Section

“We 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.”



*Petition of Ball Mountain Dam  
Hydroelectric Project,  
154 Vt. 189 (1990)*

# How to Draft an Ordinance

## The “Authority” Section

**Dillon’s Rule: towns only have three types of power:**

1. Those granted in **express** words;
2. Those necessarily or fairly **implied** in or **incident to** the powers expressly granted; and
3. Those **essential to the accomplishment of the declared objects and purposes** of the town.



# How to Draft an Ordinance

## The “Authority” Section

- “A municipality may adopt, amend, repeal and enforce ordinances or rules for any purposes **authorized by law.**”

24 V.S.A. § 1971(a)

- Towns cannot invent new subjects for local regulation, they can only act in those areas authorized by the Legislature.



# How to Draft an Ordinance

## The “Authority” Section

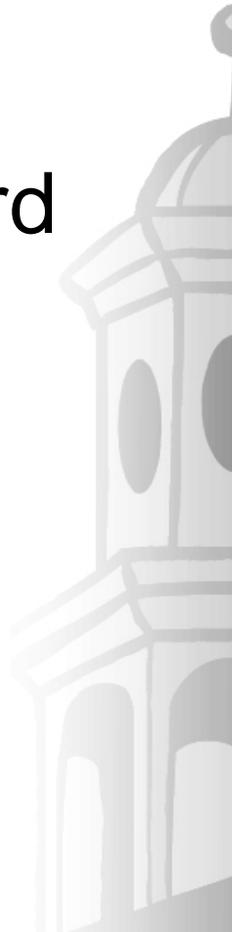
- The areas in which towns can enact ordinances are defined by state statute or town governance charter [see Title 24, Appendix A for a list of those towns];
- The central source of authority is 24 V.S.A. § 2291, but other sources are found throughout state statute.



# How to Draft an Ordinance

## The “Authority” Section

- SECTION \_\_. AUTHORITY. This ordinance is adopted by the selectboard of the Town of \_\_\_\_\_ under authority of \_\_\_\_\_ and 24 V.S.A. Chapter 59.



# How to Draft an Ordinance

## The “Authority” Section

### **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.



# How to Draft an Ordinance

## The “Purpose” Section

"Every presumption is to be made in favor of the constitutionality of such an ordinance, and it will not be declared unconstitutional without clear and irrefragable evidence that it infringes the paramount law. If, without doing violence to the fair meaning of its language, we can give the ordinance a construction free from the constitutional objection, it will be our duty to do so. The rule is that `every intendment is to be made in favor of . . . municipal power, making regulations to promote the public health and safety, and that it is not the province of the courts, except in clear cases, to interfere with the exercise of the power reposed by law in municipal corporations for the protection of local rights and the health and welfare of the people of the community.”

*Village of St. Johnsbury v. Aron,*  
103 Vt. 22, 27 (1930)



# How to Draft an Ordinance

## The “Purpose” Section

- SECTION \_\_. PURPOSE. It is the purpose of this ordinance to regulate [*insert what behavior the ordinance is regulating*] so as to protect the public health, safety, and welfare of the Town.



# How to Draft an Ordinance

## The “Definitions” Section

- SECTION \_\_\_\_. DEFINITIONS. For purposes of this ordinance, the following words and/or phrases shall apply:
- Town ordinances must be consistent with State law. Where State statute defines a term, that definition should be used;
- Only define those terms that 1. actually appear in the body of the ordinance and 2. have a meaning in the ordinance other than it’s dictionary definition.



# How to Draft an Ordinance

## The “Enforcement” Section

- An ordinance can be criminal or civil, but it can't be both.
  - “An ordinance or rule adopted or amended by a municipality under this chapter or under its municipal charter authority shall be designated as either criminal or civil, but not both.”

24 V.S.A. § 1971(b).

- The vast majority of Vermont municipal ordinances are civil ordinances.



# How to Draft an Ordinance

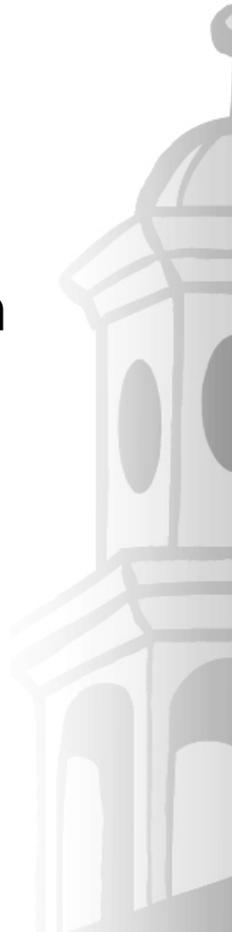
## The “Enforcement” Section

- Civil ordinances are prosecuted in the Vermont Judicial Bureau or Superior Court by the person designated by the Selectboard.
- All civil ordinance violations, and all continuing violations where the penalty is \$800.00 or less, must be brought before the Judicial Bureau. If the penalty for continuing violations is \$800.00 or more, or injunctive relief is sought, the action must be brought in Superior Court.

# How to Draft an Ordinance

## The “Enforcement” Section

- An “injunction” is a court order “commanding or preventing an action.” Black’s Law Dictionary, 8<sup>th</sup> Ed.



# How to Draft an Ordinance

## The “Enforcement” Section

- SECTION \_\_. ENFORCEMENT. The violation of this ordinance shall be a civil matter which may be enforced in the Vermont Judicial Bureau or in the \_\_\_\_\_ County Superior Court, at the election of \_\_\_\_\_.
- Violations enforced in the Judicial Bureau shall be in accordance with the provisions of 24 V.S.A. §§ 1974a and 1977 et seq. For purposes of enforcement in the Judicial Bureau, [*insert titles of those designated as enforcement officers*] shall be the designated enforcement officer(s). The enforcement officer shall issue tickets and may be the appearing officer at any hearing.

Violations enforced in the Superior Court shall be in accordance with the Vermont Rules of Civil Procedure. The Town of \_\_\_\_\_ may pursue all appropriate injunctive relief.



# How to Draft an Ordinance

## The “Penalty Clause” Section

- A civil ordinance can have a maximum penalty of \$800.00.
- Each day the violation continues constitutes a separate violation.



# How to Draft an Ordinance

## The “Penalty Clause” Section

- Determine a reasonable penalty. When setting the penalty and waiver fee amounts, the Selectboard must determine what amounts are sufficient to deter violation of the ordinance.



# How to Draft an Ordinance

## The “Penalty Clause” Section

- Fines are punitive in nature, and, therefore, the amounts of these penalties do not have to correspond to the costs incurred by the town in enforcing the ordinance.



# How to Draft an Ordinance

## The “Penalty Clause” Section

- Ordinances are presumed valid, but that presumption can be overcome. For example, they can't just be for the sole purpose of raising revenue, they must bear a real and substantial relationship to the public health, safety, welfare and convenience of the public.

*Champlain Valley Exposition v.  
Village of Essex Junction (1973)  
131 Vt. 449.*



# How to Draft an Ordinance

## The “Penalty Clause” Section

- Set a waiver fee that discourages contested actions.
- The Selectboard must determine whether subsequent violations of the same ordinance should warrant an increased penalty and waiver fee.



# How to Draft an Ordinance The “Penalty Clause” Section

## SECTION \_\_. PENALTIES.

First offense: \$25.00, waiver fee \$15.00

Second offense: \$50.00, waiver fee \$30.00

Third and each subsequent offense:  
\$100.00, waiver fee \$75.00



# How to Draft an Ordinance

## The “Penalty Clause” Section

Nuisance One, 1st Offense:	\$50 or <u>warning</u>	Waiver Fee: \$25
Nuisance One, 2nd Offense:	\$100	Waiver Fee: \$50
Nuisance One, 3rd Offense:	\$200	Waiver Fee: \$100
Nuisance One, 4th & Subsequent Offense:	\$300	Waiver Fee: \$150
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Nuisance Three, 1st Offense:	\$200 or warning	Waiver Fee: \$100
Nuisance Three, 2nd Offense:	\$400	Waiver Fee: \$200
Nuisance Three, 3rd Offense:	\$600	Waiver Fee: \$300
Nuisance Three, 4th & Subsequent Offense:	\$800	Waiver Fee: \$400

# How to Draft an Ordinance The “Penalty Clause” Section

For purposes of determining the sequence of offenses, second, third and fourth offenses within the same classification shall be those that occur within the 12-month anniversary day of the first offense. Any offense of the same classification occurring after the 12-month period shall be considered a new first offense.



# How to Draft an Ordinance

## The “Other Laws” Section

- SECTION \_\_\_. OTHER LAWS. This ordinance is in addition to all other ordinances of the Town of \_\_\_\_\_ and all applicable laws of the State of Vermont. All ordinances or parts of ordinances, resolutions, regulations, or other documents inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.



# How to Draft an Ordinance

## The “Severability Clause” Section

- SECTION \_\_\_. SEVERABILITY. If any section of this ordinance is held by a court of competent jurisdiction to be invalid, such finding shall not invalidate any other part of this ordinance.



# How to Draft an Ordinance

## The “Effective Date” Section

SECTION \_\_. EFFECTIVE DATE. This ordinance shall become effective 60 days after its adoption by the \_\_\_\_\_ Selectboard [*or at such time following the expiration of 60 days from the date of its adoption as is determined by the Selectboard per 24 V.S.A. §1973.*] If a petition is filed under 24 V.S.A. § 1973, that statute shall govern the taking effect of this ordinance.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_

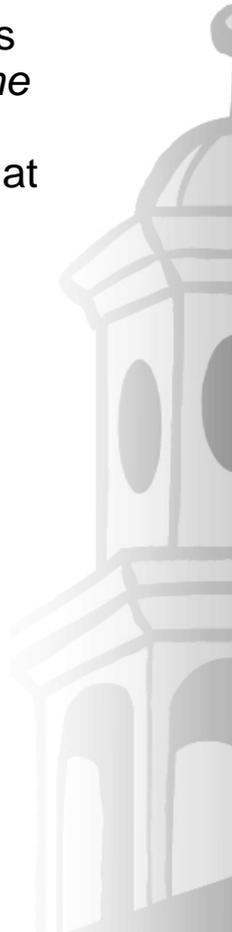
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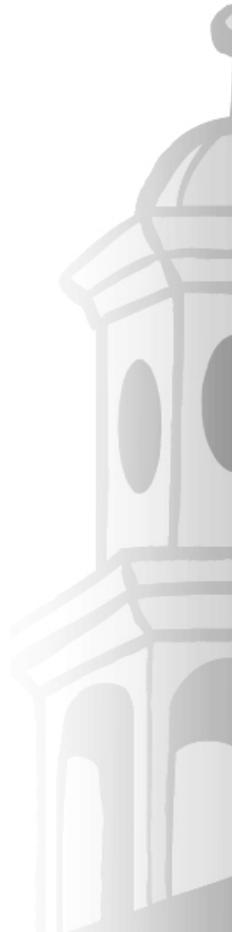
# How to Draft an Ordinance

## The “Adoption History” Section

### Adoption History

- 1. Agenda item at regular/special selectboard meeting held on \_\_\_\_\_.
- 2. Read and approved at regular/special selectboard meeting on \_\_\_\_\_ and entered in the minutes of that meeting which were approved on \_\_\_\_\_.
- 3. Posted in public places on \_\_\_\_\_.
- 4. Notice of adoption published in the \_\_\_\_\_ newspaper on \_\_\_\_\_ with a notice of the right to petition.
- 5. Other actions [petitions, etc.]

# Questions



# How to Draft an Ordinance

## Drafting Tips

- Get support for your ordinance;
- Know what you pass before you pass it;
- Keep it simple. Keep it clear. Keep it short;
- Under constitutional law, an ordinance is “void for vagueness” when it forbids conduct in terms so vague that persons of common intelligence must guess at the its meaning and differ as to its application.



# How to Draft an Ordinance

## Drafting Tips

- Don't try to sound "lawyerly"-avoid legalese;
- Use short, single thought sentences (no run-on's);
- Construct simple sentences (subject, verb, object);
- Your ordinance should speak in the present tense;
- Use simple, non-technical words;

Use commonly understood terms in their commonly understood context.



# How to Draft an Ordinance

## Drafting Tips

- Avoid using excess words;
  - Ex. *The Selectboard shall decide* instead of *The Selectboard shall make a decision.*
- Impose a duty/prohibit an action by a person.
  - Ex:
    - Don't use: *All dogs shall be licensed.*
    - Instead use: *No person shall own or possess a dog without a license.*



# How to Draft an Ordinance

## Drafting Tips

- Be gender neutral:
  - Ex. *Selectperson* instead of *Selectman*.
- Pay attention to grammar and punctuation;
- Use the active as opposed to the passive voice;
- Avoid internally inconsistent terms;
  - Ex. *Any and all; and/or*.



# How to Draft an Ordinance

## Drafting Tips

- Use the right words to govern behavior and mandatory language when imposing a duty or prohibiting an act;
- :
- “Shall” is mandatory and imposes a duty to act;
- “Shall not” means the act is prohibited;
- “May” provides discretionary authority to act;
- “May not” denies the authority to act and is a prohibition in the same sense that “shall not” is, but “shall not” is the preferred term.



# How to Draft an Ordinance

## Drafting Tips

- **Don't** just use another town's ordinance;
- **Do** remove VLCT cover memos, headers and footers before adopting any of our model ordinances;
- **Do** pay attention to language marked “guidance” accompanied by bolded or italicized text in our model ordinances.



# How to Draft an Ordinance

## Drafting Tips

- Can you enforce it?

*“Laws without enforcement are just good advice”-Abraham Lincoln*



# Questions



# Adopting an Ordinance

## The Statutory Process

- An ordinance is adopted, amended or repealed using the same statutorily prescribed process.
- That process is detailed in 24 V.S.A. §§ 1971, et seq.
- *“We presume that action taken by a selectboard in the scope of its official duties is in accordance with statutory requirements. Nonetheless, because the selectboard of a town constitutes an inferior tribunal...when a selectboard acts outside its statutory authority...the defect is akin to a lack of jurisdiction over the subject matter. The proceedings and order would be void and may be impeached in any way and at any time.”*

*In re Bill, 168 Vt. 439 (Vt. 1998)*



# Adopting an Ordinance

## The Statutory Process

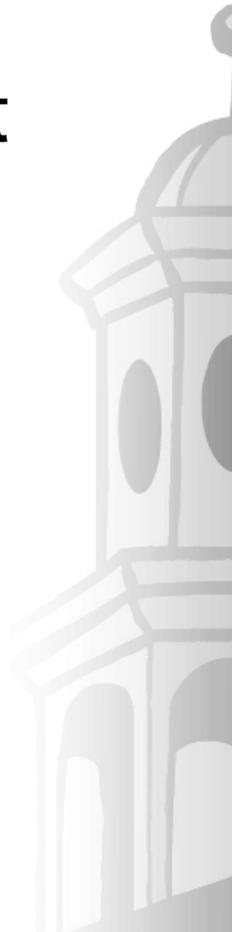
- The Selectboard must adopt an ordinance in open session at a duly warned regular or special Selectboard meeting.
- The adopted ordinance must be entered into the Selectboard's meeting minutes and posted in at least five conspicuous places in town.



# Adopting an Ordinance

## The Statutory Process

- Within 14 days of adoption, the full text of the ordinance (or a concise summary) must be published in a newspaper circulating in the town.



# Adopting an Ordinance

## The Statutory Process

- The publication in the newspaper must include:
  - Name of the town;
  - Name of the town's website (if it has one);
  - Title or subject of the ordinance;
  - Name, telephone number, and mailing address of a town officer who can answer questions and receive comments about the ordinance;
  - Where the full text can be examined;
  - Explanation of citizens' rights to petition for a vote to disapprove the ordinance.



# Adopting an Ordinance

## The Statutory Process

- Voters have 44 days to submit a petition signed by 5% of the qualified voters of the town for a town meeting (special or annual) to vote “to determine whether the voters will disapprove the ordinance or rule.”

17 V.S.A. § 1973(c)



# Adopting an Ordinance

## The Statutory Process

- If a petition is received, the Selectboard must call a special meeting within 60 days from the date of its receipt, or include an article to disapprove the ordinance in the warning for the next annual meeting if it falls within the 60 day period.
- Voting will be from the floor, unless the town has previously decided to vote on public questions by Australian ballot.



If the ordinance is not disapproved, it will take effect at the conclusion of the meeting, or at a later date specified in the ordinance.

# Adopting an Ordinance

## The Statutory Process

- If no petition is received, the ordinance will become effective 60 days after the date of its adoption, or at such time following the expiration of the 60 days as determined by the Selectboard;
- The ordinance must be recorded by the town clerk in the town records

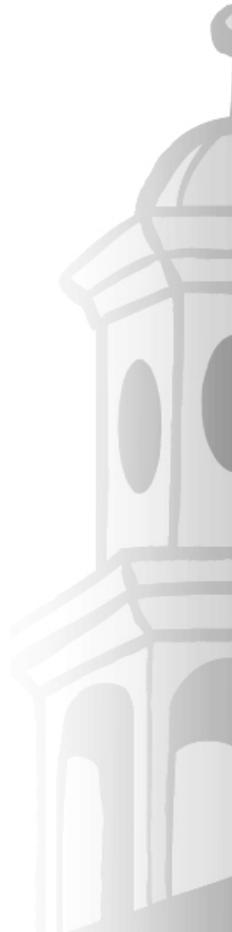


# Quick Review - Adoption

- **Pass.** The majority of the members of the selectboard of the town must adopt the new ordinance or amendments at a regular or special meeting of the board.
  - **Post.** After adoption by the selectboard, a copy of the ordinance must be posted in five conspicuous places within the town.
  - **Publish.** The full text or a concise summary of the ordinance, must be published in a newspaper of general circulation within 14 days after adoption.
  - **Petition?** Unless a petition is filed, an ordinance or amendment becomes effective 60 days after the date of its adoption (or a later date, if set by the selectboard). If there is a vote on the particular ordinance or amendment, then it becomes effective at the conclusion of the meeting at which the vote is taken, unless a majority of the voters vote to disapprove the ordinance.
- Record.** The ordinance must be recorded by the town clerk in the records of the town.



# Questions



# Need Help?

- VLCT's Municipal Assistance Center (MAC) maintains a library of model and sample municipal ordinances from around the State.
- *Ordinance Enforcement in the Judicial Bureau, Second Edition* is available on our website [www.vlct.org](http://www.vlct.org)



Feel free to call anytime for help at: (800) 649-7915, or send us an email at: [info@vlct.org](mailto:info@vlct.org)