EFFECTIVE ORDINANCE DRAFTING AND ADOPTION

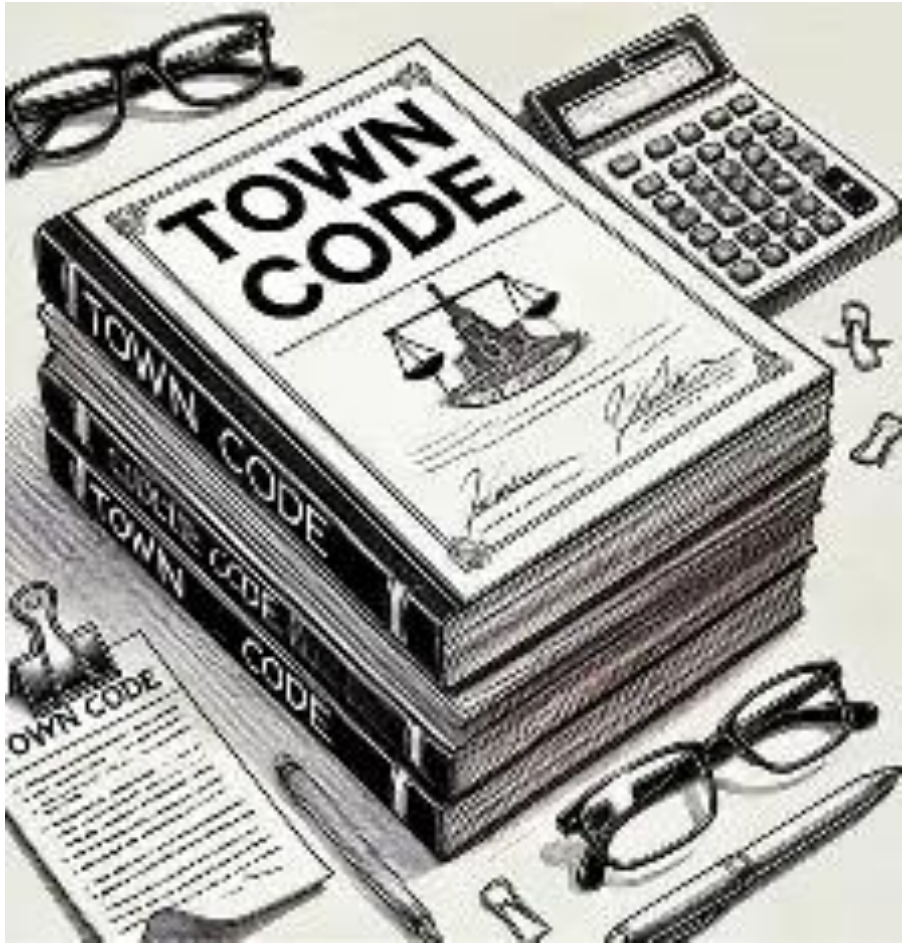
KAIL ROMANOFF, STAFF ATTORNEY
VLCT MUNICIPAL ASSISTANCE CENTER

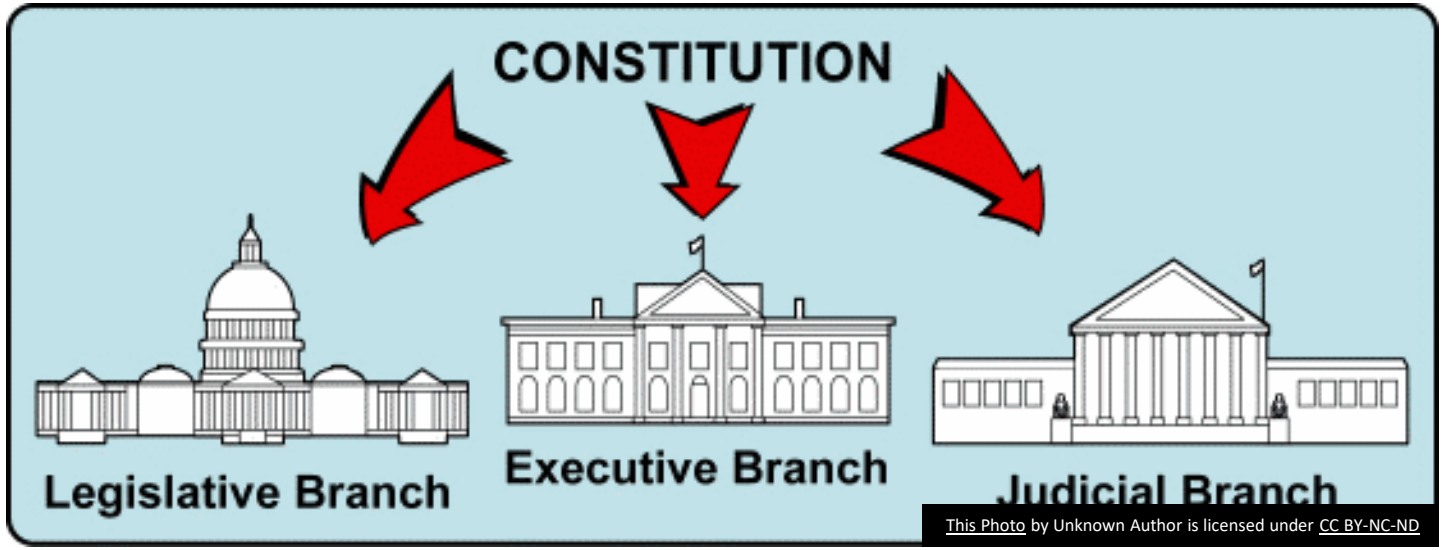
Vermont League of Cities & Towns

AGENDA

- What is an ordinance?
- Elements of an ordinance
- How to draft an ordinance
- How to adopt an ordinance

WHAT IS AN ORDINANCE?





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WHAT IS AN ORDINANCE?

WHAT IS AN ORDINANCE?

- It's "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).



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WHAT IS AN ORDINANCE?

AN ORDINANCE IS A LOCAL LAW.









WHAT IS AN ORDINANCE?
EXAMPLES

POLICIES AND ORDINANCES

ELEMENTS OF AN ORDINANCE

ELEMENTS OF AN ORDINANCE

Requirements of a valid ordinance (drafting checklist)

A valid ordinance must:

1. Be adopted by the majority of the total membership of a Selectboard;

2. Emanate from authority granted by the State;

3. Comply with State and Federal Constitutions.



ELEMENTS OF AN ORDINANCE



Requirements of a Valid Ordinance (drafting checklist Continued)

4. Comply with State and Federal Constitutions:

   a. Bear a rational relationship to a legitimate governmental purpose;

   b. Be definite and certain as to the proscribed conduct;

5. Be enacted in the manner prescribed by State law.

ELEMENTS OF AN ORDINANCE
TITLE AND SECTION NUMBERS

[INSERT NAME OF MUNICIPALITY]

ORDINANCE REGULATING ALL-TERRAIN VEHICLES (ATVS)

SECTION 1. AUTHORITY. Under authority granted in 24 V.S.A. Chapter 59, 24 V.S.A. §§ 2291(1), (4), 23 V.S.A. § 3506, and 23 V.S.A. § 3510, the Selectboard of the Town of _____ hereby adopts the following civil ordinance regulating the time, manner, and location of operation of all-terrain vehicles within the town.

SECTION 2. PURPOSE. The purpose of this Ordinance is to promote and protect the public health, safety, and welfare of the Town, and to preserve residents' rights to quiet enjoyment of homes and properties by regulating the time, manner, and location of operation of all-terrain vehicles ("ATVs") within the Town.

ELEMENTS OF AN ORDINANCE
TITLE AND SECTION NUMBERS

[INSERT NAME OF MUNICIPALITY]

ORDINANCE REGULATING ALL-TERRAIN VEHICLES (ATVS)

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ELEMENTS OF AN ORDINANCE
THE “AUTHORITY” SECTION


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

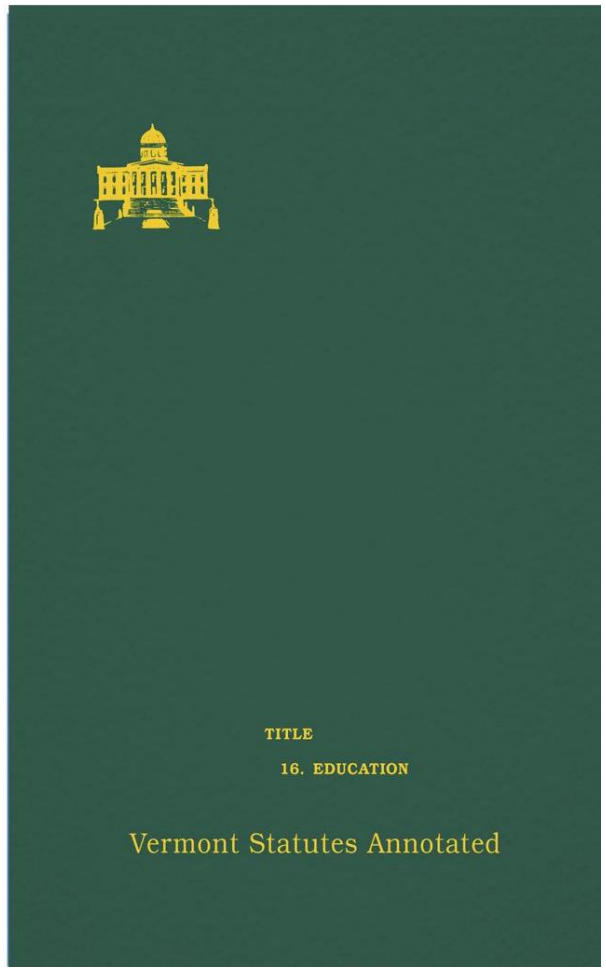
1. Those granted in express words;
2. Those necessarily or fairly implied in or incident to the powers expressly granted; and
3. Those essential to the accomplishment of the declared objects and purposes of the town.

ELEMENTS OF AN ORDINANCE
THE “AUTHORITY” SECTION

- Towns can only adopt ordinances authorized by law.
  - Towns can’t invent new subjects for local regulation (unless by charter).



ELEMENTS OF AN ORDINANCE
THE “AUTHORITY” SECTION



- The areas in which towns can enact ordinances are defined by state statute or town charter [see Title 24, Appendix for a list of town charters];

- The central source of authority is 24 V.S.A. § 2291, but other sources exist throughout law.

ELEMENTS OF AN ORDINANCE
THE “AUTHORITY” SECTION

What can you regulate?

- Vehicles (speed limits/parking) and pedestrian traffic;
- Junkyards;
- Domestic pets and animals/animal cruelty;
- Domestic (livestock) animals;
- Storage/dumping/burning of solid waste;
- Public nuisances (e.g. loitering, noise, etc.);
- Possession/consumption of open alcoholic beverages;
- Smoking in public places;
- Dangerous/vacant buildings;
- ATV/snowmobile operation;
- Etc.

ELEMENTS OF 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.

ELEMENTS OF 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.

ELEMENTS OF 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)

ELEMENTS OF AN ORDINANCE
THE "PURPOSE" SECTION

WHEREAS, the Town of Brighton has, by virtue of authority granted in 24 V.S.A. 1971 and 24 V.S.A. 2202(a), the powers to adopt, amend, repeal, and enforce ordinances, and to manage and regulate solid waste disposal within its boundaries;

AND WHEREAS, the Town of Brighton has, by virtue of authority granted in 24 V.S.A. Section 1974a, the power to enforce civil ordinance violations;

NOW, THEREFORE, to protect public health and safety and to promote the responsible use of resources and protection of the environment, the Selectboard of the Town of Brighton hereby adopts this ordinance to regulate the collection and disposal of solid waste in the Town of Brighton.

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.

ELEMENTS OF 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 its dictionary definition.

ELEMENTS OF AN ORDINANCE
THE “ENFORCEMENT” SECTION

An ordinance can be criminal or civil, but it can’t be both.

The vast majority of Vermont municipal ordinances are civil.

ELEMENTS OF AN ORDINANCE
THE "ENFORCEMENT" SECTION

- Civil ordinances are prosecuted in the Vermont Judicial Bureau or Superior Court by the person designated by the Selectboard.

- Civil ordinance violations where the penalty is $800.00 or less must be brought before the Judicial Bureau.

- If the penalty is for more than $800.00 or injunctive relief is sought, the action must be brought in Superior Court.

ELEMENTS OF 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.

ELEMENTS OF 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.

ELEMENTS OF AN ORDINANCE
THE “PENALTY CLAUSE” SECTION



Determine a reasonable penalty. When setting the penalty, the Selectboard must determine what amounts are sufficient to deter violating the ordinance.

ELEMENTS OF AN ORDINANCE

THE “PENALTY CLAUSE” SECTION

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



ELEMENTS OF AN ORDINANCE THE “PENALTY CLAUSE” SECTION

Ordinance fees 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.



ELEMENTS OF AN ORDINANCE
THE “PENALTY CLAUSE” SECTION



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

ELEMENTS OF 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

ELEMENTS OF AN ORDINANCE
THE "PENALTY CLAUSE" SECTION

Lack of current license and/or rabies tag

1st Offense: warning or impoundment and/or $___ fine	Waiver Fee: $___
2nd Offense: impoundment and/or $___ fine	Waiver Fee: $___
3rd & Subsequent Offense: impoundment/or and $___ fine.	Waiver Fee: $___

Running at large

1st Offense: warning or impoundment and/or $___ fine	Waiver Fee: $___
2nd Offense: impoundment and/or $___ fine	Waiver Fee: $___
3rd & Subsequent Offense: impoundment and/or $___ fine	Waiver Fee: $___

ELEMENTS OF AN ORDINANCE
THE “PENALTY CLAUSE” SECTION

Determining the sequences of offenses for violations of this Ordinance shall be as follows:

a subsequent violation that is identical to, and that occurs within __ months of, a previous violation shall be considered a higher offense (i.e., second, third, or subsequent offense). Any subsequent identical violation that occurs after __months of a previous identical violation shall be considered a new first offense.

ELEMENTS OF 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.

ELEMENTS OF 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.

ELEMENTS OF 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_.

_____

DATE

_____

_____

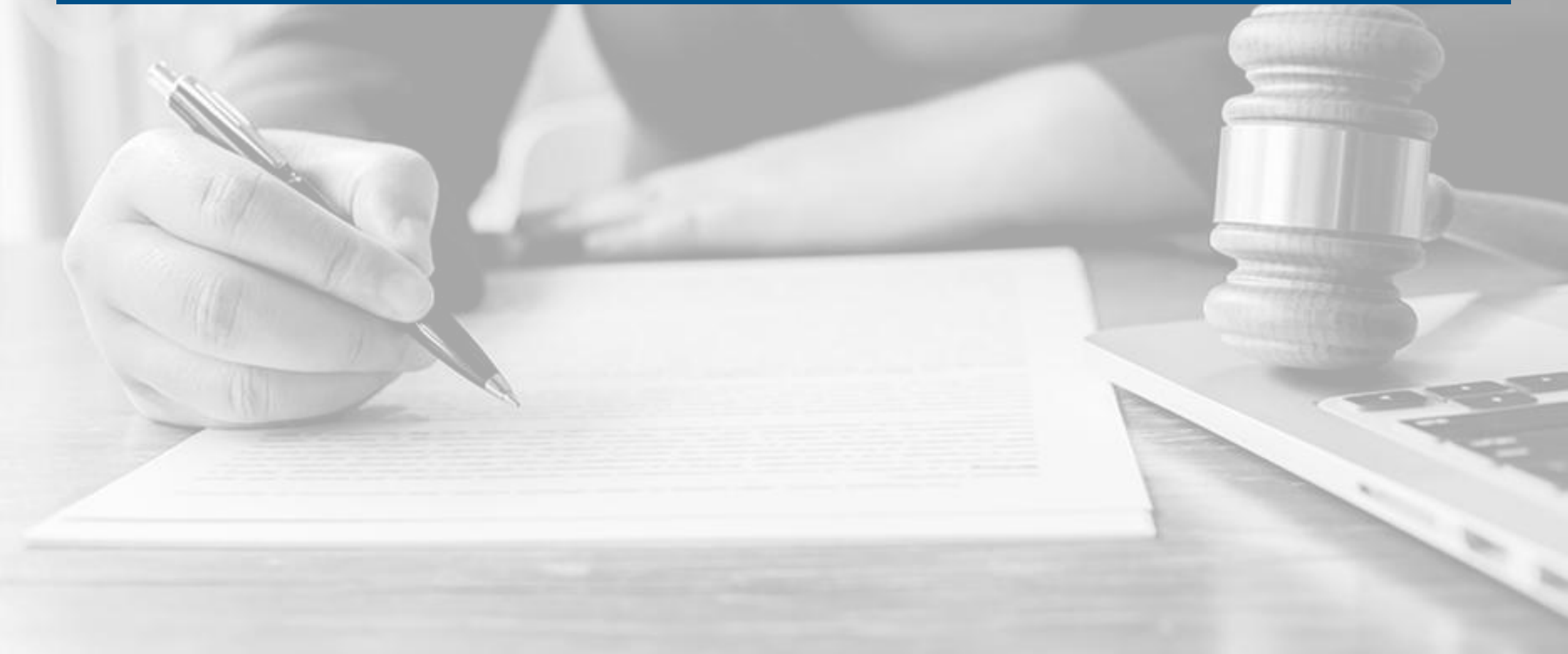
SIGNATURES

ELEMENTS OF 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.]

HOW TO DRAFT AN ORDINANCE



HOW TO DRAFT AN ORDINANCE
DRAFTING TIPS

- Retain close control over the drafting process.
- Get support for your ordinance;
- Know what you pass before you pass it;
- Keep it simple. Keep it clear. Keep it short;

HOW TO DRAFT AN ORDINANCE
DRAFTING TIPS

- Don’t try to sound “lawyerly” - avoid legalese;
- Use commonly understood terms in their commonly understood context.
- Use short, single thought sentences (no run-on’s);
- Construct simple sentences (subject, verb, object);
- Use simple, non-technical words;
- Your ordinance should speak in the present tense;

HOW TO DRAFT AN ORDINANCE
DRAFTING TIPS

- Avoid using **SHALL:**
  - Ex.
    - Don't use: "*The Selectboard **shall** make a decision.*"
    - Instead use: "*The Selectboard **will** decide.*"

- Impose a duty/prohibit an action by a person.
  - Ex:
    - Don't use: "*All dogs **shall** be licensed.*"
    - Instead use: "*All dogs **must** be licensed.*"

HOW TO DRAFT AN ORDINANCE
DRAFTING TIPS

- Be gender neutral:
  - Ex. *Selectperson* instead of *Selectman.*
- 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

- Pay attention to grammar and punctuation:

  “Let’s eat, grandma!”



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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.

USER'S GUIDE TO VLCT ORDINANCES

HOW TO DRAFT AN ORDINANCE
DRAFTING TIPS

Can you enforce it?

"Laws without enforcement are just good advice"

-Abraham Lincoln



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HOW TO ADOPT AN ORDINANCE

HOW TO ADOPT 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.
  - Failure to follow the process could invalidate the ordinance.

HOW TO ADOPT AN ORDINANCE
THE STATUTORY PROCESS

- The Selectboard must adopt an ordinance in open session at a duly warned Selectboard meeting.

- The adopted ordinance must be entered into the Selectboard's meeting minutes and posted in at least five conspicuous places in town.

HOW TO ADOPT 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.

HOW TO ADOPT 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.

ORDINANCE NOTICE REQUIREMENTS INFO SHEET

HOW TO ADOPT 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.”

24 V.S.A. § 1973(c)

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HOW TO ADOPT 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 question(s) 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.

MODEL SPECIAL TOWN MEETING WARNINGs FOR ORDINANCE ADOPTION

HOW TO ADOPT 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.

HOW TO ADOPT AN ORDINANCE
QUICK REVIEW

Pass. The majority of the members of the selectboard must adopt the ordinance/amendment/repeal at a duly warned selectboard meeting.

Post. After adoption by the selectboard, a copy of the ordinance must be posted in five conspicuous places within the town**.**

Publish. *Th*e 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 singed by 5% of the voters is filed within 44 days, the ordinance/amendment/repeal becomes effective 60 days after the date of its adoption (or a later date, if set by the selectboard). If petitioned then it becomes effective at the conclusion of the town meeting at which the vote is taken, unless a majority of the voters vote to disapprove the ordinance/amendment/repeal.

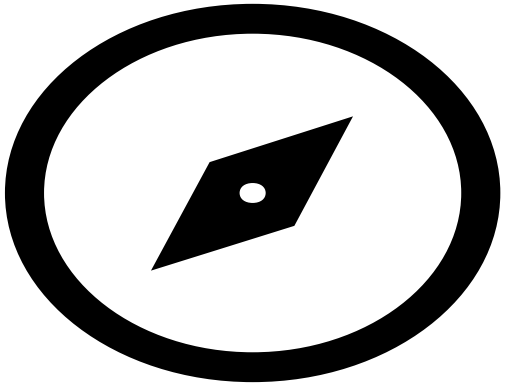
Record. The ordinance must be recorded by the town clerk in the records of the town.

QUICK GUIDE TO ORDINANCE ADOPTION, AMENDMENT, OR REPEAL

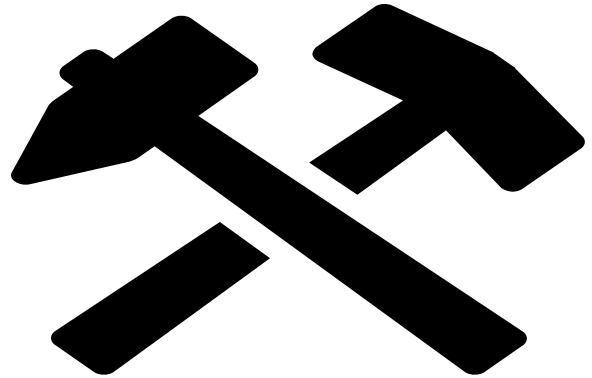
ORDINANCE RESOURCES



Quick Guide to Ordinance Adoption, Amendment, or Repeal



User's Guide to VLCT Model Ordinances



Ordinance Notice Requirements Info. Sheet

QUESTIONS



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MAC MEMBER INQUIRY SERVICE

- "Submit a legal inquiry" or "ask a question" tabs on website
- Send us a message
- 1-800-649-7915
- info@vlct.org