

# **Municipal Ordinance Enforcement**

**East Montpelier, VT**

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*Sarah Jarvis, Staff Attorney  
Municipal Assistance Center  
Vermont League of Cities and Towns*



# Agenda

- What is a municipal ordinance?
- Types: criminal and civil
- Enforcement Options
- Judicial Bureau



# What is an Ordinance?

An ordinance is a **local law of a municipal corporation.**


It is also a **legally enforceable statement of municipal policy.**



# What is an Ordinance?

An ordinance can be **criminal or civil**.

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



# Criminal Ordinances

## 24 V.S.A. § 1974

A **criminal ordinance** can provide for a fine or imprisonment.

The fine cannot exceed **\$500.00**.  
Imprisonment cannot exceed **one year**.

The violation of a criminal ordinance is a **misdemeanor**.

# Criminal Ordinances

## 24 V.S.A. § 1974

All **criminal** ordinances are prosecuted in the **Criminal Division of Superior Court**.

Criminal ordinance violators are issued a **citation to appear** in criminal court by a **police officer**.

# Criminal Ordinances

## 24 V.S.A. § 1974

The defendant appears for an **arraignment** at which the **charges are read** and the defendant **enters a plea**.



# Criminal Ordinances

## 24 V.S.A. § 1974

If the case does go to **trial** (most don't), the municipal attorney will **prosecute** the case.

To enforce a criminal ordinance effectively, a municipality must have **police officers** (to issue citations) and a **municipal attorney** to prosecute the violation.





# Criminal Ordinances

## 24 V.S.A. § 1974

At the trial, the **Vermont Rules of Evidence** will apply.

The town will be required to prove its case **beyond a reasonable doubt**.



# Criminal Ordinances

## 24 V.S.A. § 1974

Many, if not most, Vermont towns **do not** have the **resources** to **effectively enforce** a criminal ordinance.

What do we do?



# Civil Ordinances

## 24 V.S.A. 1974a

A civil ordinance can have a **maximum penalty** of **\$800.00**.

Each day the violation continues constitutes a **separate violation**.




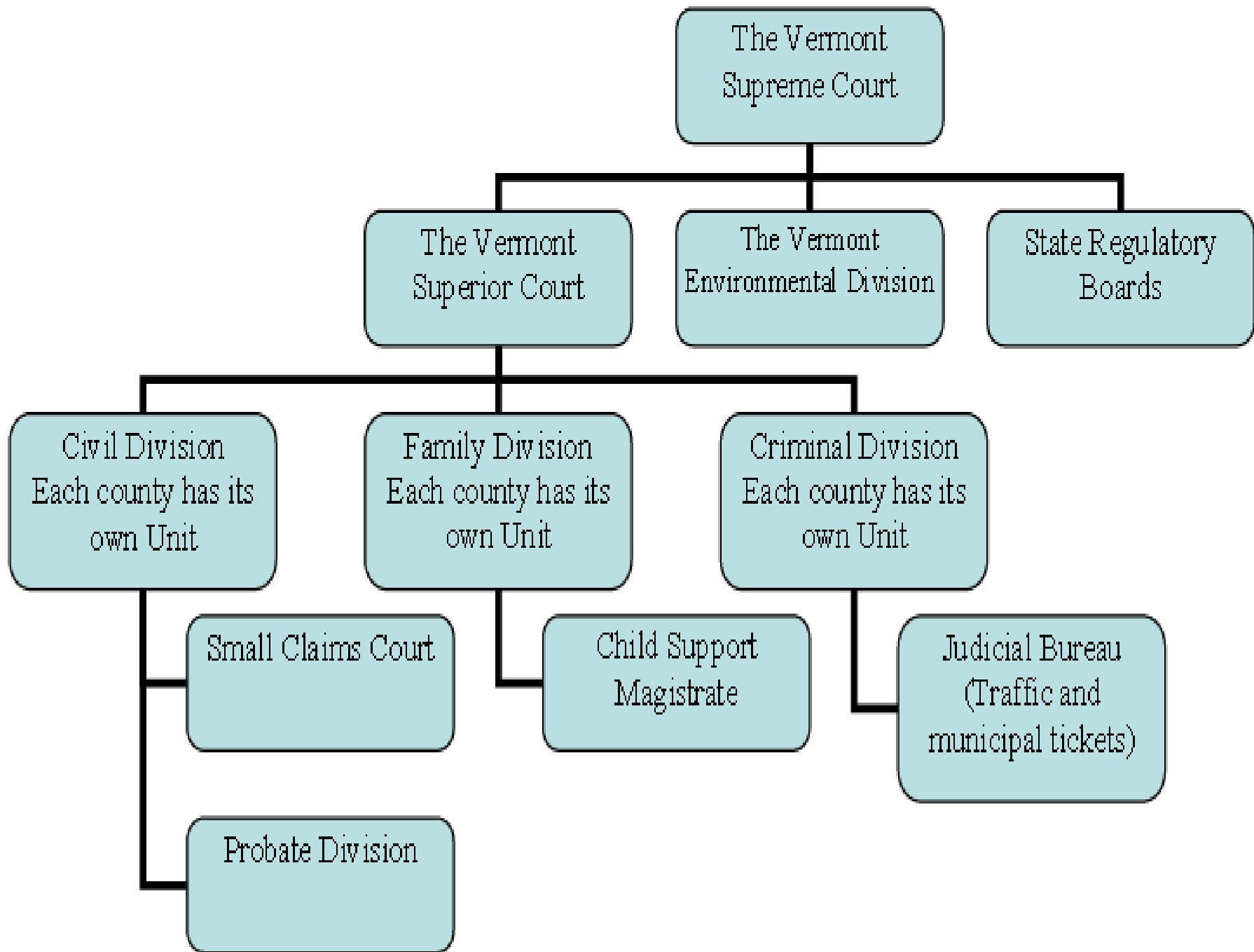
# Civil Ordinances

## 24 V.S.A. § 1974a

Civil ordinances are prosecuted in the **Vermont Judicial Bureau** or the **Criminal Division of Superior Court**.

The Judicial Bureau is best known as **traffic court**. It is also responsible for hearing **civil municipal ordinance violations**.

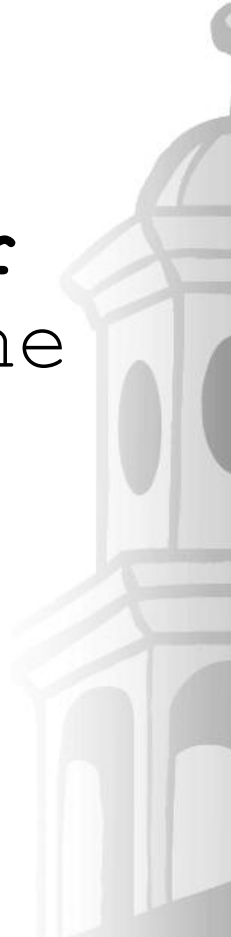




# Civil Ordinances

## 24 V.S.A. § 1974a


All **civil ordinance violations**, where the penalty is **\$800.00 or less**, must be brought before the **Judicial Bureau**.



# Civil Ordinances

## 24 V.S.A. § 1974a

If the penalty for all continuing ordinance violations is **greater than \$800.00 or injunctive relief is sought**, the action must be brought in the **Criminal Division of Superior Court**.



# Civil Ordinances

## 24 V.S.A. § 1974a

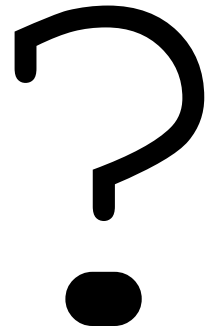
Injunctive relief is a court order prohibiting a specified act or commanding someone to undo some wrong.

Injunctive relief can be enforced by contempt (i.e., jail time).





# Questions



# Decide and Articulate Type of Violation

An ordinance must state if it is **criminal** (enforced through the District Court) or **civil** (enforced the Judicial Bureau or Superior Court).



# Decide and Articulate Type of Violation

## **SECTION XX. ENFORCEMENT.**

*This is a civil ordinance and shall be enforced in the Vermont Judicial Bureau and Vermont Superior Court in accordance with 24 V.S.A. §§ 1974a et seq.*



# Decide and Articulate Issuing Officers

An ordinance must state who is **authorized to issue tickets** for violation of the ordinance.

We generally recommend that enforcement only be undertaken by certified law enforcement officers



# Decide and Articulate Custodial Official

Town must designate a "custodial official" to be the record keeper and point of contact for Judicial Bureau. This person is

Notified when tickets paid


Notified when pending hearing

Must be officially designated by town to Judicial Bureau



# Decide and Articulate Penalty and Waiver Fee

When setting the penalty and waiver fee amounts, the legislative body must determine what amounts are sufficient to **deter violation** of the ordinance.



# Decide and Articulate 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 town in enforcing the ordinance.**

However, **most towns set their penalties too low,** resulting in significant losses when enforcement is required.

# Decide and Articulate Penalty and Waiver Fee

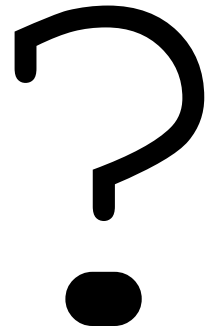
Set a **waiver fee** that **discourages contested actions.**

**Subsequent violations** of the same ordinance should **warrant an increased penalty and waiver fee.**





# Questions



# Judicial Bureau

Statewide jurisdiction over civil violations including:

- Municipal ordinances
- Traffic violations
- Hunting violations
- Alcohol and tobacco violations
- Burning and Waste Disposal violations



# Judicial Bureau

Hearing Officers generally  
Assistant ("Side") Judges (elected  
by county).

In Washington County the hearings  
take place in the District  
Courthouse in Barre

Judicial Bureau Central Office is  
in White River Junction



# Judicial Bureau

There is no prosecutor.

There is only an "enforcement officer" (the person that the Selectboard has designated to represent the town)



# Judicial Bureau

The enforcement process is **initiated** by issuance of a **municipal complaint ticket**.

Two copies are given to the violator, one is mailed to the Judicial Bureau, and one is kept by the issuing officer.

A ticket can be served in person or by mail.



# VERMONT MUNICIPAL COMPLAINT

Form #430  
Rev. 10/94

0000000000

Plaintiff Municipality (please print)						Municipal No.	
Defendant's Last or Organization Name				First	Middle Initial		
Legal Address: Street					Home Phone ( )		
City		State	Zip	Business Phone ( )			
Mailing Address: Street					<i>Telephone numbers help the court notify you if a scheduled hearing is postponed.</i>		
City		State	Zip				
Date of Birth		<input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Organization		Soc. Sec. # (optional)			
Violation Date	Time	Place					
Defendant did then and there commit the following violation:							
In violation of Municipal Ordinance:						Offense Code	
Maximum authorized penalty is \$500 under 24 VSA 1974a(a)		Waiver Penalty \$		<input type="checkbox"/> ORDER to CEASE requested under 24 VSA 1974a(c) (if checked)			
I have just and reasonable grounds to believe the defendant named above committed this violation. I served the complaint by:							
<input type="checkbox"/> Delivery In Hand <input type="checkbox"/> First Class Mail		Delivered To			Date		
Official's No.	Official's Name (printed)			Official's Signature			
I am not on active duty in the military or other service of the United States as included in the Soldier's & Sailor's Relief Act of 1940.					Related Civil Municipal Cases		
Defendant's Signature:		Date:		<input type="checkbox"/> Declined to Sign		<input type="checkbox"/> Criminal Case Pending	
Soldier's & Sailor's Relief Act Affidavit							
Under oath, I depose and state I am the issuing official of this complaint. When issuing the complaint, I asked the defendant if he/she was presently on active duty as defined by the Soldier's and Sailor's Relief Act of 1940. The defendant indicated he/she: <input type="checkbox"/> WAS. <input type="checkbox"/> WAS NOT.							
Official's Signature:						BUREAU'S COPY	
State of Vermont County of		Sworn and subscribed before me: (notary public)		Date:			



# Judicial Bureau


The issuance, enforcement and prosecution of tickets is subject to **Rule 80.6** of the Vermont Rules of Civil Procedure

The hearings in Judicial Bureau are governed by **Rule 6** of the Vermont Rules of Small Claims Procedure



# Judicial Bureau

A defendant can respond to a complaint in one of four ways:

- **Admit** and pay fine.
  - **Not contest** charge and pay fine.
  - **Deny** offense and request hearing.
  - **Fail to respond**, resulting in a default judgment.
- 



# Judicial Bureau

Defendants must **respond** to the municipal complaint by **sending in the plea and waiver form** found on the complaint within **20 days** of its service.



# Judicial Bureau

Failure of the defendant to respond to the complaint within 20 days will result in a **default judgment** being entered against him or her.

In the case of a default judgment, the defendant will be ordered to pay the **full penalty**.

# Judicial Bureau

If the offense is denied, the Judicial Bureau will **schedule a hearing** and notify the issuing official and the person charged of the date, time and place for the hearing.



# Judicial Bureau

The Judicial Bureau is designed to operate **without lawyers**, so hearings are conducted **somewhat informally**.

The **rules of evidence** are relaxed. Hearings typically take 15-20 minutes.



# Judicial Bureau

The **burden of proof** is on the municipality.

The standard of proof is **clear and convincing evidence**.

Decision is issued at hearing or in writing.



# Judicial Bureau


Appeal is to Criminal Division of Superior Court

- On the record (unless defendant requests de novo)
- Judge only (only unless defendant requests a jury trial and pays \$75 jury fee)



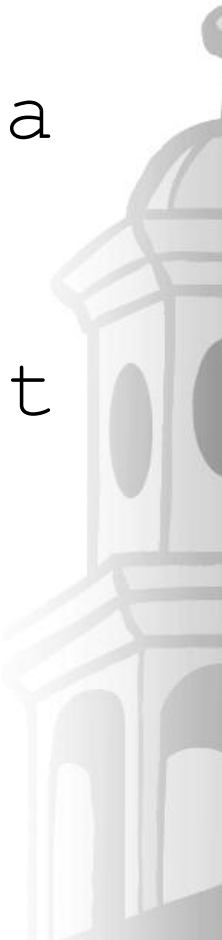
# Judicial Bureau

After the hearing officer has entered judgment for the municipality, the person found in violation of the municipal ordinance has up to **30 days to pay the penalty** to the Judicial Bureau. This is subject to any **appeal** taken.



# Judicial Bureau


The Judicial Bureau will send a **monthly nonpayment report** to each municipality with a list of those payments that have not been made within the 30 days.





# Enforcement of Municipal Ordinances

All civil remedies for collection of judgments are then available to pursue delinquent penalties, **including attaching wages or property, filing and foreclosure of judgment liens;** small claims actions and the filing of a **civil contempt** action.



# Enforcement of Municipal Ordinances

Unpaid judgments can also be **referred to a collection agency** by the clerk of the Judicial Bureau.



# Enforcement of Municipal Ordinances

**Note:** Even with all of these available remedies **collection** of outstanding fines can be a **difficult proposition** and success is not always guaranteed.



# Zoning Ordinances (Bylaws)

- May be enforced through Judicial Bureau
- Alternative to procedures set out in Chapter 117 of Title 24
- ZA issues tickets
- Civil infraction with max penalty of \$500



# Zoning Ordinances (Bylaws)


- Landowner does not get the 7 day opportunity to cure the violation (as with NOV)
- No appeal to municipal board (as with NOV)
- Cannot be used for continuing violations that result in fines of more than \$500
- Injunctive relief is not available



# Traffic Violations

The Judicial Bureau has jurisdiction over traffic violations.

Includes any violation of a municipal ordinance relating to the operation of motor vehicles, or use of highways. Stop signs, one way streets, speed limits, etc.



# Traffic Violations

The Judicial Bureau DOES NOT have jurisdiction over parking ordinances.

Municipality must establish an administrative appeals process and may pursue civil enforcement in District Court



# Traffic Violations

The complaint form is the Uniform Traffic Complaint. It is slightly different than a municipal ticket.

The appearing officer for a traffic violation before the Judicial Bureau is the law enforcement officer who issued the traffic complaint.

The fines for traffic violations are set by the state, not the municipality. The judge sets the waiver penalty.





# Questions

