

# **ORDINANCE ENFORCEMENT IN THE JUDICIAL BUREAU**

**A Comprehensive Guide**  
Second Edition

Vermont League of Cities and Towns  
2001

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## PROLOGUE

The purpose of this book is to provide Vermont's municipalities and their attorneys with a comprehensive and understandable guide to ordinance enforcement in the Judicial Bureau (formerly the Traffic and Municipal Ordinance Bureau). The Handbook includes a discussion of how to draft and adopt civil ordinances, and follows the enforcement process from recognizing the violation through issuing the complaint and appearing at the court hearing. It goes on to discuss special problem areas of enforcement and the collection of fines imposed by the court.

Throughout the text are references to relevant case law and to statutory authority. The Appendices include hints on drafting ordinances, sample forms and pertinent statutes and court rules.

This Handbook was first published in 1995 as *Ordinance Enforcement in the Traffic and Municipal Ordinance Bureau* and has been updated to include recent changes in the Vermont Statutes and Court Rules. Reasonable efforts have been made to ensure that the information provided in this publication is accurate and complete. However, the Vermont League of Cities and Towns' Municipal Law Center makes no warranty, express or implied, or any representation that such information is suitable for any particular purpose or that it may be relied upon for any specific act, undertaking or course of conduct.

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## I. INTRODUCTION

Historically, all local ordinance violations in Vermont were criminal actions that had to be prosecuted by the local state's attorney or the municipal attorney. This created a significant enforcement hurdle for most municipalities. First, local governments had a hard time convincing the understaffed, overworked prosecutors to take time from their busy schedules to enforce municipal matters which, compared to domestic assaults, murders, robberies and sex crimes, appeared trivial or less pressing. (In a few, rare instances, municipalities were able to convince the local state's attorney to swear in the municipality's town agent as a special prosecutor to prosecute its ordinance violations.) In the event that a prosecutor decided to take the case, it was also a challenge to convince the criminal courts to take ordinance matters seriously. In addition, if the municipality wished to order the citizen to stop a continuing violation, a separate action for an injunction had to be brought in the Superior Court.

The combination of factors cited above resulted in few Vermont municipalities regularly enforcing their ordinances. This failure to enforce violations led to an erosion of public confidence in the effectiveness of local government, since the majority of legitimate citizen complaints would result in no effective action by the municipality. Concern over the inability of Vermont's cities and towns to enforce their ordinances effectively led municipal officials to work with VLCT, state legislators and the courts to develop alternatives to the traditional enforcement methods available to local governments. Finally, in 1994, the Vermont Legislature passed a new law allowing municipalities to enforce their local ordinances by writing complaints (tickets), which are prosecuted through the Judicial Bureau.

The Judicial Bureau was originally named the Traffic and Municipal Ordinance Enforcement Bureau.

This Handbook is designed to assist municipalities in all aspects of their enforcement authority through the Judicial Bureau. It begins by reviewing the law, and then walks through the enforcement process, seeking to provide a realistic guide to the appointment of enforcement officers, recognizing a violation, writing the complaint, prosecuting a complaint in the Judicial Bureau and collecting fines. In addition, this Handbook discusses the applicability of this enforcement method to zoning violations. It also contains a chapter designed to assist a municipality in drafting and revising its ordinances so that they will meet the requirements of the law and survive judicial scrutiny. Finally, there are a number of Appendices, which contain copies of pertinent statutes and court rules, numerous sample forms, and helpful hints for adopting and enforcing ordinances.

The Judicial Bureau should provide a quick, effective and inexpensive way for municipalities to enforce their ordinances and enhance public confidence in local government.

**Staying current:** Because the Judicial Bureau and its procedures are relatively new, the laws governing the Bureau and ordinance enforcement have been amended regularly to reflect experience and practice. If your town chooses to enforce ordinances through the Judicial Bureau,

it is important that you stay informed about changes in the laws and rules of procedure. You can find out about any recent changes by contacting the VLCT Municipal Law Center.

## **II. PREPARING FOR CIVIL ENFORCEMENT OF MUNICIPAL ORDINANCES**

### **A. UNDERSTANDING THE LAW**

The law establishing civil enforcement through the Judicial Bureau was originally passed by the Legislature in 1994 and has been amended several times. It is comprised of the addition of Chapter 29 to Title 4, amendments to various provisions in Titles 13, 23 and 24 of the Vermont Statutes Annotated and amendments to some rules of court procedure. Most of the changes are amendments and additions to Chapter 59 of Title 24 governing municipal authority to adopt and enforce regulatory ordinances.

The law authorizes a municipality to designate each of its ordinances (except parking) as either a civil or criminal offense, and to set civil penalties of up to \$500 per day, with each day the violation continues constituting a new offense. Specially designated officials may issue complaints to those individuals and businesses that they believe are in violation of the municipal ordinances, and those alleged violators may pay the waiver fee listed on the complaint or may contest the complaint in a court proceeding. The law grants the Judicial Bureau's hearing officers the authority to hear contested civil ordinance cases.

Municipalities that decide to use the civil enforcement process should be alert to possible changes by the legislature and interpretations of the law by the courts during the coming years. While the law creates an opportunity for local governments to have ordinances that may be quickly and affordably enforced, there are areas of the law that need further work and clarification by the Legislature.

Meanwhile, a review of the chart on the next page of this Handbook provides basic information about how the new law works, and what each municipality must do in order to take advantage of the civil enforcement process.

## THE LAW IN A NUTSHELL

Act 237, as passed by the Legislature in 1994, forms the basis of the law and amends a number of existing statutes, primarily in Chapter 59 of Title 24. The following is an overview of the amendments which directly affect municipalities and the new court rules.

- **Municipalities must review each ordinance for legality and then decide whether it should be a civil or criminal violation.** The amended 24 V.S.A. § 1971 (b) requires municipalities to designate each of their ordinances as *either* “criminal” or “civil.” This means, to take advantage of the civil enforcement process, municipalities must amend or readopt their ordinances in order to designate them civil or criminal. A review of whether an ordinance is properly authorized, drafted and adopted will prevent unnecessary dismissals after complaints are issued.
- **Municipalities must set a penalty fee and waiver fee for each violation.** Twenty-four V.S.A. §§ 1974(a) and 1974a (a) allow the municipality to set the penalty for violation of a civil or criminal ordinance up to \$500 per offense, with each day considered a new offense.
- **The selectboard must designate one individual who will be responsible for the complaint books, enforcement officers who will issue complaints for civil violations, and officials who may represent the municipality in the Judicial Bureau.** The selectboard must inform the court administrator’s office, on a form provided by the court, of the names of all persons authorized to issue municipal complaints. This form also requires the municipality to designate one individual as the custodian of the town’s complaint books and to list all of the persons who are authorized to prosecute cases before the Judicial Bureau.
- **When a civil ordinance is violated, the issuing officer shall issue a complaint to the violator.** When the issuing officer wishes to enforce a local ordinance, he or she will fill out a complaint form, provide two copies to the defendant (the alleged violator), and retain two copies, one of which will be sent to the Judicial Bureau. The book of complaints also contains an informational booklet to be given to the defendant.
- **The defendant can choose to pay the waiver fee or contest the complaint in the Judicial Bureau.** The defendant can pay the waiver fee on the complaint or request a hearing to contest the violation. If the defendant pays the waiver fee, the money collected by the Judicial Bureau will be remitted to the town, except for \$10, which will be retained by the Bureau for administrative expenses.
- **In contested cases a municipal official represents the town.** The Bureau is designed to be used without attorneys. Thus, in contested cases, the official designated to prosecute violations will represent the town and must establish the violation by “clear and convincing evidence.”
- **Appeals from decisions of the Bureau may be taken to District Court.** If the defendant or town is unhappy with the outcome of the hearing at the Bureau, an appeal may be taken to District Court. The defendant may request *de novo* review and may receive a jury trial, but an appeal to the District Court by the municipality is on the record. There is no automatic right of appeal to the Vermont Supreme Court, although the Court may decide to hear an appeal upon petition. (**Note:** The appeal process in Essex County is different from the general law and is spelled out in 4 V.S.A. § 1108.)

## B. REVIEWING MUNICIPAL ORDINANCES

Municipalities that want to take advantage of the civil enforcement process should review all ordinances they wish to make civil violations. Because the validity of ordinances to be enforced in the Judicial Bureau may be challenged by defendants, it is important to be sure they will survive judicial scrutiny. It would be a waste of municipal resources to issue complaints that may be dismissed because of a successful challenge to the ordinance.

Ordinances should be reviewed on the basis of the following:

1. **Authority.** Be sure that there is authority to adopt the particular regulation.
2. **Constitutional Issues.** Make sure that the ordinance is drafted so as to avoid constitutional challenge.
3. **Record of Adoption.** Be sure that there is a record of the adoption procedure for each ordinance.

The following sections of this Handbook provide an in-depth discussion of municipal authority to adopt ordinances, the constitutional issues to consider and what is required for a clear record of adoption. Because these issues are complex, ever changing and grounded in court-made law, it makes sense to have an attorney review your ordinances for legal sufficiency. Most town attorneys are happy to conduct such a review. In addition, the VLCT Municipal Law Center also regularly reviews ordinances for municipalities. For more information about Law Center review of ordinances, or for a free lawyer referral, call VLCT at 1-800-649-7915.

## C. AUTHORITY TO ADOPT PARTICULAR REGULATIONS

Vermont municipalities are subdivisions of the state and have no independent local regulatory authority. This means that municipal power to enact local ordinances and bylaws comes exclusively from legislative grant of authority. See *Petition of Ball Mountain Dam*, 154 Vt. 189 (1990).

Unless the municipality can point to a statute or charter provision that permits a particular regulatory action, the ordinance that expresses the regulation will be invalid.

Authority for particular subjects of local regulation is scattered throughout the Vermont Statutes. A list of the enabling statutes is included in Appendix A of this Handbook. In addition, a number of municipalities have governance charters which provide that particular local government with specific regulatory authority that may not be found in the general statutes.

Note that each year the Vermont Legislature may amend, add or repeal particular enabling legislation. It is important to keep up with these changes, as **an ordinance will no longer be valid if its enabling authority has been removed.**



Local ordinances that conflict with state law will be invalid unless the Legislature has specifically authorized the municipality (by charter or statute) to enact such a regulation. This means that **in some instances there might be both state and local regulation of the same activity**. It is not unusual in these situations for the municipal regulation to provide for controls that are more stringent than those provided by state law. However, the enabling legislation will **not** authorize a less stringent municipal regulation.

#### **D. CONSTITUTIONAL ISSUES**

Local regulations that contravene the United States Constitution or the Vermont Constitution are invalid. Therefore, prior to beginning civil enforcement, it is wise to review all municipal ordinances to be sure that they are constitutionally sufficient.

It is long established that the courts in Vermont will presume an ordinance is constitutional, and “it will not be declared unconstitutional without clear and irrefragable evidence.” *St. Johnsbury v. Aron*, 103 Vt. 22 (1930). However, if a defendant makes a showing that an ordinance violates a provision of the state or federal constitution, then the burden will shift to the municipality to establish that the ordinance is valid.

There are a number of federal constitutional provisions to consider when evaluating municipal ordinances. For example, the Fourteenth Amendment Due Process Clause and Equal Protection Clause prohibit ordinances that are overbroad, overly vague, unlawfully discriminate against a particular class of individuals, or treat one group differently than others with no rational basis. In addition, the First Amendment limits the degree to which a regulation may abridge an individual’s freedom of speech or association; the Fifth Amendment prevents the taking of private property without just compensation; and the Commerce Clause prevents an ordinance from unduly interfering with interstate commerce.

The following is a brief review of the major constitutional provisions which may affect the validity of municipal ordinances: due process, procedural due process, equal protection of the laws, First Amendment rights, protection of private property, impairment of contracts and interference with interstate commerce.

**Due Process.** No ordinance may deprive an individual of liberty or property without due process of law.

The due process clause limits both the **substance** of ordinances and the **procedure** involved with their enforcement.

**Substantive Due Process** protects individuals from the arbitrary actions of local government. Ordinances that are arbitrary or plain abuses of power will be unconstitutional. Note, however, that an ordinance that was enacted for the protection of the health, safety and welfare of the inhabitants of the municipality generally will not be found to have violated substantive due process rights.

- The test that courts use to determine whether an ordinance is arbitrary or abusive is whether the regulation bears a rational relation to a legitimate governmental purpose. (As a practical matter, when this test is applied, almost every regulation will survive judicial scrutiny.)
- When a fundamental right is involved (e.g. the right to free speech or association) the test as to whether the regulation violates due process is whether a compelling governmental interest is advanced by the regulation and whether the ordinance is the least restrictive method available to advance the compelling governmental interest.
- An ordinance will violate due process if it fails to set forth sufficiently clear standards by which a person is deprived of reasonable use of his or her property.
- Substantive due process requires that an ordinance be definite and certain as to the proscribed conduct so persons of ordinary intelligence do not have to guess at its meaning. An ordinance will be void unless it provides a person with reasonably clear notice of what action is prohibited.
- Due process prohibits ordinances that treat persons who are in similar circumstances dissimilarly with no rational basis. (The equal protection clause also prohibits this.)

**Procedural Due Process** refers to the process that is constitutionally required before an individual is deprived of life, liberty or property.

- Generally, due process requires notice and an opportunity to be heard. Ordinances adopted as civil violations will meet the requirements of the due process clause so long as the complaint provides notice of the violation, since the complaint form includes information about the right to “contest” the complaint in the Judicial Bureau.

**Equal Protection of the Laws.** No ordinance may deny an individual “equal protection of the laws.”

The Equal Protection Clause of the 14<sup>th</sup> Amendment prohibits undue discrimination. This means that **ordinances and regulations must apply equally to all individuals who are in the same or similar circumstances.**

- An ordinance may violate the equal protection clause “on its face” by treating similarly situated people differently, and it may violate the equal protection clause “as applied,” if there is discrimination in enforcement of the ordinance. Thus, an ordinance that is equal on its face may still violate the equal protection clause if it is applied in a discriminatory way.
- A municipality may treat different classes of people or entities differently if it can show that the individuals or entities are differently situated. For example, a town may not adopt an ordinance which sets a curfew for all individuals of French Canadian ancestry: it may, however, set a curfew for individuals who are under the age of 16 if it has a compelling reason to treat minors differently.

## FOUR EQUAL PROTECTION TESTS

**Rational Basis Test.** When no suspect class (e.g. race, religion, ethnicity, etc.) or fundamental right (e.g., free speech) is involved, then there is a strong presumption of constitutionality, and the municipality must only show that its classification scheme is **reasonably related to a legitimate governmental interest**.

**Strict Scrutiny Test.** When a suspect class or a fundamental right is involved, there will be a heavy burden on the government to show that the law serves a compelling governmental interest and is the least restrictive means of achieving the government's goals.

**Intermediate Scrutiny.** When a gender-based classification is involved, the court will apply an intermediate level of scrutiny. Under this test the ordinance must be substantially related to an important governmental interest.

**Minors.** When the privacy rights of minors are involved, the court will find the restriction valid only if it serves a significant governmental interest not present in the case of an adult.

### 1. First Amendment Rights

**Free Exercise of Religion.** The municipality may not adopt ordinances whose primary purpose or effect is to regulate, infringe or promote religion.

**Three-part test to determine whether a governmental regulation unconstitutionally burdens the free exercise of religion:**

1. Does the regulation reflect a clearly secular purpose?
2. Does the regulation have a primary effect that neither advances nor inhibits religion?
3. Does the regulation avoid excessive governmental entanglement with religion?

**Freedom of Speech and Press.** The municipality may not adopt an ordinance that unreasonably restricts freedom of speech or the press. Note, however, that the municipality may restrict the time, place and manner of speech, if such regulations are deemed reasonable and not unduly restrictive. Thus, noise ordinances and ordinances restricting solicitation or signs may be constitutionally valid if the restrictions are clear and reasonable. *Howard Opera House Associates ... v. Urban Outfitters*, USDC, Vt. 2:99-CV-140 (Feb. 2, 2001). In addition, commercial speech receives a lesser protection than political speech, so, although it may not be banned, it can be subject to greater regulation than political speech.

**Freedom of Association.** The municipality cannot unduly restrict the freedom of association. This means that regulations may not completely prohibit the use of traditional public forums, such as parks, schools, streets and sidewalks, for First Amendment activities. The municipality can make reasonable time, place and manner restrictions, and permits may be required for the use of public spaces, so long as they are not subject to unbridled official discretion. In addition,

the use of private property can be regulated to limit free association if it is done to protect the general health, safety and welfare.

## **2. Miscellaneous Constitutional Provisions**

**Protection of Private Property.** Municipal ordinances may not result in private property being taken or damaged without compensation and without due process of law. In addition, ordinances may not impose unreasonable restraints on the right to use and enjoy property.

Ordinances may have a detrimental effect on private property without constituting a taking or damage requiring compensation. Moreover, the seizure or destruction of property that is a danger to the public is a lawful exercise of police power and will not require due process or compensation. Finally, ordinances that are reasonable, enacted for the public health, safety or welfare (for example, zoning ordinances), and which involve no arbitrary discrimination or destruction or deprivation of property, although restrictive of certain uses, and incidentally depreciative of present value, are generally constitutional.

**Impairment of Contracts.** The municipality may not pass laws that directly affect existing contractual obligations. Note, however, that the freedom to enter into contracts is subject to regulation in the interest of the common good (e.g., an ordinance which requires all trash haulers to require their municipal and commercial customers to separate out recyclables lawfully regulates the individual contracts) and the right to contract is subject to the police powers of a municipality. Ordinances may void otherwise valid contracts so long as they reflect a proper exercise of police power.

**Interference with Interstate Commerce.** The municipality may not make regulations that unduly burden the flow of interstate or foreign commerce. Thus, municipal regulations that have a substantial economic effect on interstate commerce may be found to be invalid, even if the ordinance only indirectly affects commerce.

For example, municipal itinerant vendor regulations may not impose a higher license fee on out-of-state vendors, and municipal solid waste regulations may not require trash haulers to take trash collected from local residences to a particular landfill.

## **E. RECORD OF ADOPTION**

Ordinances may be challenged for improper enactment as well as improper substance. Municipalities must follow all mandatory statutory procedures when adopting ordinances. Thus, the courts will most likely invalidate an ordinance that was not enacted with strict conformity to statutory procedural requirements. See *Kirchner v. Geibink*, 150 Vt. 172 (1988).

Courts will presume that municipal enactments were properly adopted. Therefore, the defendant has the initial burden of proof on this issue. However, if a defendant provides some evidence that an ordinance was not properly adopted, then the municipality must show that it followed all

necessary procedures when it adopted the ordinance. If the municipality cannot meet its burden, then the court will hold the ordinance invalid.

The best way to help the appearing official meet the town's burden of proof is to be sure that the municipality keeps an adoption record for all ordinances. The record should note the date that the ordinance was adopted by the selectboard, include a copy of the minutes of the meeting at which the ordinance was adopted, and note the date and places that the notice was posted and published. A copy of the published notice should also be included, if possible. Note that 24 V.S.A. § 4474 states that a certificate of the clerk that shows the adoption record of a zoning ordinance is presumptive evidence as to the facts as they relate to the lawful adoption of the bylaw, plan, or action in question.

In most cases the original record of adoption will remain in the clerk's office, and the issuing official will only have to bring a certified copy of that record to court when a defendant makes a procedural challenge to the validity of the ordinance. However, a certified copy of the ordinance itself should be brought to every hearing.

Statutory limits have been placed on the ability of a defendant to challenge certain ordinances for procedural insufficiencies.

**Zoning.** 24 V.S.A. § 4494 provides that a court must find a town plan or bylaws adopted, amended or repealed under 24 V.S.A. Chapter 117, valid if there has been "substantial compliance with the procedural requirements" set out in that chapter. In addition, it provides that no challenge for any procedural defect can occur when the plan or bylaw has already been in effect for two years. *Town of Woodstock v. Bahramian*, 160 Vt. 417 (1993).

**Speed Limits and Traffic Control Signs and Signals.** 23 V.S.A. § 1007 (e) provides that lack of evidence of a traffic and engineering study, which is required before a town may adopt a local speed ordinance, will only invalidate a local speed limit ordinance for five years following the day on which the ordinance took effect.

In addition, 23 V.S.A. § 2206 (b) (motor vehicles) and 12 V.S.A. § 5706 (b) (snowmobile control signs) provide that testimony of a witness as to the existence of a traffic control sign, signal or marking, or sign establishing a speed zone shall be *prima facie* evidence that the traffic control device or sign exists pursuant to a lawfully adopted regulation.

In spite of these two statutes, the Judicial Bureau has held that a stop sign is not valid unless it was placed under authority of an ordinance. This opinion has not been appealed, so there is no binding legal opinion at this time. However, it is advisable to install stop signs and other traffic control devices only when a supporting ordinance has been properly adopted. (See also *VLCT News*, Nov. 1999, p. 6.)

## **F. DESIGNATING ORDINANCES CIVIL OR CRIMINAL**

**Deciding whether an ordinance should be civil or criminal.** The first step for municipalities wishing to take advantage of the civil enforcement process is to decide which, if any, of the

town's ordinances should remain criminal and which should be designated civil violations. This is a policy decision that will vary from town to town, and will depend on the demographics of a particular community, as well as the regulatory problems facing the town. For instance, a college town may have a greater concern with enforcement of its noise ordinance than other towns, and a more urban municipality may have a greater concern with the discharge of firearms within the town's limits than a rural community. In most instances it will make sense for communities to designate their ordinances as civil to enable them to use the new civil enforcement process. The following are some questions the selectboard can consider when deciding whether an ordinance violation should remain a criminal offense.

#### **SHOULD AN ORDINANCE VIOLATION REMAIN A CRIMINAL OFFENSE?**

- What is the goal of the regulation?
- Is there a reason the town would be interested in having criminal sanctions (including fines, jail time, probation, or a criminal record) result from a violation of the particular regulation?
- Is the subject of the regulation one that is treated as a criminal matter by state law?
- Does violation of the particular ordinance often involve violation of other state criminal laws?
- Is it important that a law enforcement officer be involved in the enforcement of the particular ordinance?

#### **G. AMENDING THE ORDINANCE**

Once the municipality decides that one or more ordinances should be civil violations, the selectboard must act to designate the ordinance a civil offense and to set the waiver fee and civil penalty amounts. This can be done either by adopting a new ordinance, amending the existing ordinance, or repealing the existing ordinance and replacing it with a new one. When amending an old ordinance, examine its form and substance thoroughly so that any existing errors or omissions will be corrected.

**Important! Remember to eliminate any old language in your ordinance that may be in conflict with the new provision.**

**Sample language of amendments.** There are many ways to word an ordinance amendment designating the ordinance as civil. The drafter's goal should be to keep it simple and clear. The following is sample language that can be added to almost any ordinance in order to meet the requirements of the statute.

### SAMPLE PENALTY PROVISION

A violation of this ordinance shall be a civil matter enforced in accordance with the provisions of 24 V.S.A. §§ 1974a and 1977 et seq. A civil penalty of not more than \$500 may be imposed for a violation of this civil ordinance, and the waiver fee shall be set at \$\_\_\_\_\_ for the first offense, \$\_\_\_\_\_ for the second offense within a six month period, and \$\_\_\_\_\_ for all subsequent offenses within a six month period. Each day that the violation continues shall constitute a separate violation of this ordinance.

### HOW TO ADOPT OR AMEND AN ORDINANCE

1. **Adopt.** The legislative body of the municipality must adopt the new ordinance or amendments at a regular or special meeting of the board. The ordinance must be **adopted by a majority of the members of the board**, and the ordinance and vote must be reflected in the minutes of the meeting.
2. **Post.** After adoption by the legislative body, a copy of the ordinance must be **posted in five conspicuous places** within the municipality.
3. **Publish.** The full text or a concise summary of the ordinance, including the source of authority to adopt, a statement of purpose, principal provisions, and a table of contents or list of section headings, must be **published in a newspaper of general circulation** in the municipality on a day not more than 14 days after the adoption of the ordinance or amendment. The published notice must also include a statement that explains where in the municipality the full text of the ordinance can be reviewed, the name, address and phone number of a person to contact for more information about the ordinance, and an explanation of the right of citizens to petition for a vote on the ordinance at an annual or special meeting.
4. **Effective date.** Unless a petition is filed for a permissive referendum, an ordinance or amendment becomes effective 60 days after the date of its adoption (or a later date, if set by the legislative body). If there is a vote on the particular ordinance or amendment, then the ordinance will become effective at the conclusion of the meeting at which the vote is taken, unless a majority of the voters vote to disapprove the ordinance.
5. **Recording.** All ordinances and amendments must be recorded by the town clerk in the records of the municipality.

See 24 V.S.A. §§ 1972-1973. **NOTE:** municipalities with governance charters may have a slightly different adoption procedure.

### H. SETTING THE WAIVER FEE AND CIVIL PENALTY AMOUNTS

**Statutory limits.** According to statute the municipality may impose a penalty of up to \$500 for a violation of a civil ordinance. Note that each day the violation continues shall constitute a

separate offense. 24 V.S.A. § 1974a (a). It is up to the legislative body of the municipality to determine how much the penalty should be for each ordinance violation.

**Determine reasonable penalty amounts.** Unlike regulatory fees, the waiver fee and civil penalty are punitive in nature, and, therefore, the amounts of these penalties do not have to correspond to the costs of the town's ordinance enforcement program. On the other hand, if too many towns use ordinance enforcement as a means to augment the town's general fund, the Vermont Legislature may be inclined to limit the authority of towns to exact penalties for ordinance violations. Therefore, the municipality must set its waiver fees and civil penalties with the goal of ordinance enforcement in mind.

When setting the penalty and fee amounts, the selectboard must look at each ordinance to determine what amounts are sufficient to deter violation of the ordinance. Thus, each ordinance may have a different penalty and fee associated with its violation.

**The civil penalty and waiver fee should not be the same amount.** This is necessary to encourage offenders to simply pay the complaint, rather than bringing each offense before the Judicial Bureau. When hearing officers can assess a civil penalty which is a greater amount than the waiver fee, offenders have an incentive to simply pay the fine and stop the infraction unless there is a real basis for contesting the complaint.

**Set the civil penalty as a "sum certain" or a set amount.** The civil penalty can be set as a "sum certain" (e.g., \$100 per offense) or as an amount to be set by the hearing officer (e.g., up to \$100 per offense). A set penalty provides guidance to the appearing official who may be asked by the hearing officer "what penalty amount is generally requested by the town" for the particular offense.

**Determine whether subsequent violations should have a greater penalty and waiver fee.** In addition to determining whether the civil penalty should be a sum certain or a variable amount, the legislative body must determine whether subsequent violations of the same ordinance within a specific time period should warrant an increased penalty and waiver fee. The following is an example of a penalty provision which allows incremental fees.

#### **SAMPLE PENALTY PROVISION WITH INCREMENTAL FEES**

A violation of this ordinance shall be a civil matter enforced in accordance with the provisions of 24 V.S.A. § 1974a and § 1977 et seq. A civil penalty of \$100 may be imposed for the initial violation of this civil ordinance. The penalty for the second offense within a six-month period shall be \$150, and the penalty for each subsequent offense within a six-month period shall be \$200.

The waiver fee shall be set at \$50 for the first offense, \$75 for the second offense within a six-month period, and \$100 for each subsequent offense within a six-month period. Each day the violation continues shall constitute a separate violation of this ordinance.

See also the sample penalty provision on page 11 of this Handbook.



## **ORDINANCE ADOPTION/REVIEW CHECKLIST**

- **Review each ordinance to determine if it is lawful.**
  - Is there authority to adopt the ordinance?
    - Does a statute authorize the regulation?
    - Does the municipal charter authorize the regulation?
  - Is the ordinance constitutional?
    - Are the regulatory standards clear in the ordinance?
    - Does the ordinance unlawfully discriminate against one class of individuals?
- **Readopt or amend each ordinance to designate it civil or criminal.**
  - Decide if a particular offense should be a criminal or civil matter.
  - Readopt or amend each ordinance the municipality wishes to make civil by adding specific language designating the offense a civil matter pursuant to 24 V.S.A. § 1971(b).
  - Readopt or amend the ordinance at a regularly-scheduled or specially-warned selectboard meeting, then post and publish as required by 24 V.S.A. § 1972.
  - The amended ordinance will become effective 60 days after its adoption by the selectboard unless voters of the town petition for a permissive referendum in accordance with 24 V.S.A. § 1973.
- **Readopt or amend each ordinance to set civil penalty and waiver fees.**
  - Establish a specific civil penalty amount for each ordinance violation.
    - The penalty amount may not exceed \$500.
    - The civil penalty may increase for successive violations of the same ordinance within a specific time period.
  - Establish a specific waiver fee for each violation.
    - The waiver fee should be less than the penalty for the same violation.
    - The waiver fee may increase for successive violations of the same ordinance within a specific time period.
- **Establish a clear record of adoption for all ordinances.**
  - Establish a record for each ordinance to show that it was properly adopted, posted, published and recorded. This may prevent legal challenges to the validity of the ordinance.

## I. DESIGNATING OFFICIALS TO IMPLEMENT THE ENFORCEMENT PROGRAM

Before a municipality can participate in the civil enforcement process, the legislative body of the municipality must designate officials to fill the roles of “custodial official,” “issuing officials” and “appearing officials.” The legislative body of the municipality must report to the Judicial Bureau the names of the various designated officials before that office will issue complaint books to the town.

**Custodial Official.** According to the policies and procedures of the Office of the Court Administrator, there must be *one* individual in each municipality who will be the designated custodian of the municipality’s complaint books. The Judicial Bureau will issue the complaint books to that individual, and it shall be that individual’s duty to distribute the complaint books to the authorized “issuing officials” and to know where all complaints are at any given time. It is important to make sure the complaint books being used are up-to-date. The complaint forms are changed or updated periodically, and issuing an obsolete complaint may result in dismissal of the case.

The custodial official will also receive all correspondence from the Judicial Bureau, including monthly reports on the status of all outstanding complaints and a listing of all scheduled court dates. It will be that person’s responsibility to deliver the monthly and quarterly reports to the legislative body of the municipality and to inform the “appearing officials” of their court dates.

The legislative body of the municipality can appoint anyone to serve as the custodial official. However, because of the nature of the position, it should be an individual who is easily accessible to others (i.e. has an office in a convenient location and does not leave town for extended periods of time), is a good communicator, is well organized, and who is willing to act simply as a custodian, without attempting to control use of the complaints. A member of the selectboard, the town manager, the administrative assistant to the selectboard or the town clerk (if he or she is willing) are all reasonable officials to designate as the custodial official.

**Issuing Officials.** The legislative body of the municipality must inform the Judicial Bureau of the name of each person who is authorized to issue municipal complaints on behalf of the municipality. Each issuing official will be given an officer number by the Bureau, which must appear on each complaint issued by that official.

If a particular official is not on the Judicial Bureau’s list, he or she will not be entitled to issue complaints on behalf of the municipality.

When deciding whom to appoint as the issuing officials, the legislative body should consider which officials may be charged by the municipality to administer or enforce a particular regulatory program. For example, the health officer, one of the sewage commissioners or the sewage control officer should be appointed to enforce the sewage ordinance; the constable or animal control officer should be appointed to issue complaints for dog violations; the health officer should be appointed to issue complaints for local health violations, etc.

Be sure to include those officials who have statutory authority to enforce particular civil ordinances for the municipality, such as the zoning administrator.

Finally, consider appointing the grand juror and the constable as enforcement officers. (Note that the grand juror and a constable with law enforcement authority are automatically authorized to enforce 24 V.S.A. § 2201(b).) However, the constable will probably not have automatic authority to enforce other civil violations as he or she is only authorized by statute to enforce criminal violations. A town may allow a constable from another municipality to exercise law enforcement authority within the town under the circumstances described in 24 V.S.A. § 1936a (d).

If the municipality has a police force, those officers should be appointed issuing officials. In addition, some towns contract with the county sheriff or the local state police barracks for some enforcement services.

When determining who should be an issuing official, the legislative body of the municipality should be aware that these individuals will be exercising a great deal of authority. If the individual is not reliable, or is petty or unpredictable, they should not be designated an issuing official.

**Appearing Officials.** According to the law, the legislative body of the municipality must designate officials who may represent the municipality in the Judicial Bureau when municipal complaints are heard. When traffic complaints are heard, the issuing law enforcement officer will appear for the town. The appearing officials must appear on behalf of the municipality when complaints are contested and will have to prove the town's case against the alleged violator by presenting "clear and convincing evidence." In addition, at the time of the hearing, the officer may dismiss a complaint with the approval of the hearing officer. D.C.C.R. 80.6 (f) and 4 V.S.A. § 1106 (d). (For more information about amending or dismissing the complaint, see Chapter III of this Handbook, "Voiding or Amending of Complaint.")

The Judicial Bureau is designed to be used without attorneys, so the municipality's appearing officials do not have to have formal legal training. However, appearing officials are expected to follow all rules applicable to the Bureau relative to filing, presenting and appearing before the court.

**Issuing officials are not automatically authorized to act as appearing officials in the Judicial Bureau.** The municipality may want its appearing officials to include some or all of the individuals it has designated as issuing officials since it will be those individuals who know the facts of the particular situation and will be in the best position to make the case for the municipality. If the issuing official is not also an appearing official, he or she will always need to be called as a witness to the facts of the alleged violation. Individuals who are to act as both issuing and appearing officials must be specifically designated by the municipality as both.

### FACTORS TO CONSIDER WHEN APPOINTING APPEARING OFFICIALS

- **Communication Skills.** The appearing official must be able to communicate clearly and effectively with the hearing officer, the defendant and witnesses in order to establish that the defendant violated the municipality's civil ordinance.
- **Ability to Analyze Information.** The appearing official must be able to analyze the information in a particular case in order to determine which facts are essential for making the municipality's case against the defendant. The official must also be able to understand what is required to prove a particular violation by "clear and convincing evidence."
- **Ability to Exercise Judgment.** At the time of the hearing, the appearing official will have the authority to dismiss a case with the approval of the hearing officer. Thus, this individual must be able to exercise reasoned judgment since he or she has the power to alter or waive the municipality's rights pursuant to a particular matter without first consulting the selectboard.
- **Even Temper.** The appearing official will be required to maintain his or her self control in challenging circumstances. It is important for the town's representative to respond calmly and courteously to the defendant, witnesses and hearing officer even if they are being subjected to verbal attacks on their credibility, motives, or personal integrity.
- **Neat and Respectable Appearance.** As the town's representative before the hearing officers, it is important that the appearing official be able to maintain a neat and respectable appearance. Although appearance alone will not win a case, the hearing officers may feel that failure to dress appropriately for court is a sign of disrespect.

The legislative body may want to designate the municipal agent or the grand juror as appearing officials for instances in which a particular issuing official does not feel comfortable representing the town in court.

Finally, if the municipality wishes to be represented by an attorney in a particular case, the attorney does not have to be specifically designated, but may "enter his or her appearance" in accordance with court rules.

**Changing the designations.** If the legislative body of a municipality wishes to add or remove names from the above list of officials, it must inform the Judicial Bureau in writing.

It is the responsibility of the legislative body of the municipality to inform the Judicial Bureau of any changes in the list of designated individuals prior to the new official's issuance of complaints or appearance before the Judicial Bureau. Failure to do so may result in the dismissal of contested municipal complaints.

### III. THE ENFORCEMENT PROCESS

#### A. RECOGNIZING A VIOLATION

Issuing officials must be familiar with the ordinances they are charged with enforcing so they know when a violation has occurred. If a simple review of the ordinance does not provide clear information about what activities constitute a violation, the ordinance is probably unenforceable (see constitutional issues – void for vagueness) and should be rewritten.

Reasonable reports of violations should be investigated promptly, particularly if they involve activities which are harmful or potentially harmful to people or property. Violations may be investigated by a phone call or an on-site visit to the alleged violator or his or her property.

Even though ordinance violations are civil matters, municipal officials are bound by constitutional prohibitions against unlawful searches and seizures.

An issuing official who is investigating a possible ordinance violation may not conduct a warrantless search of private property.

The issuing official may, however, visit all of the publicly-traveled portions of the property. For example, unless the driveway is posted with no trespassing signs, the official may drive up to the house of the alleged violator and then walk up the driveway or walkway to the front door of the house (or to the door which is obviously used as the main entrance). A good test to determine whether a portion of a property is publicly traveled is whether a visitor, mail carrier or delivery person would be welcome or expected at that location.

While visiting the publicly traveled portion of a property, if the official can see the activity that violates the municipal ordinance, or if the official can see indications that a violation is occurring in a private portion of the property (i.e. when approaching or knocking on the door he or she can see that a violation is occurring in the house), that can be sufficient evidence of a violation to issue a municipal complaint or to seek a search warrant in order to investigate further.

**When in doubt, get a search warrant prior to entering onto the property.** In some cases, by the time the violation has been reported to the issuing officer, all or most of the visible evidence of the violation may be gone. For example, a dog that was seen running loose in violation of a leash law may be safely home. If the official investigates such a complaint and cannot find sufficient evidence that a violation has occurred, he or she may generally not issue a municipal complaint. There are some instances, however, in which the complaint itself will constitute sufficient evidence that a violation has occurred. In those cases, the complaint must have been made by a witness to or a victim of the violation. In cases where the complaint cannot be corroborated by the issuing official's own observation, it is imperative that the complainant, and any other witnesses, be prepared to testify at the hearing before the Judicial Bureau, should the defendant contest the complaint.

During the investigative process the issuing official should be sure to collect sufficient evidence to establish that the violation occurred. His or her own testimony will often be sufficient to prove the violation in a contested case. But, if possible, corroborating witnesses or other evidence are helpful in assisting the municipality to meet its burden of presenting “clear and convincing evidence” that a violation occurred.

**A picture is worth a thousand words.** This old adage is especially relevant when trying to convince a hearing officer of the seriousness of a particular matter. Whenever a photograph can illustrate a violation, it is well worth the issuing official’s efforts to have a camera ready when investigating a complaint.

## **B. ISSUING THE COMPLAINT**

Municipal complaints are available from the Judicial Bureau in books of ten complaints. There are two different complaints—one for municipal complaints and one for traffic offenses. The complaint forms are updated periodically, and it is important to make sure that, when they are, the town orders the new forms. Issuing an outdated complaint form may result in dismissal of the case.

A municipality may order, free of charge, as many complaint books as it believes it will use for enforcement of its ordinances. There is an order form in Appendix I of this Handbook that can be used to order complaint books. There are also sample complaint forms in Appendices C and D. Please refer to the sample forms when reading the following materials about issuing complaints.

The **custodial official** of the town will receive the town’s complaint books from the Judicial Bureau and will be responsible for knowing where every blank or completed complaint is at any time. Issuing officials must then get the books from the municipality’s custodial official. Each complaint is numbered and comes with four non-carbon copies. The issuing official should inform the custodial official when he or she has issued a complaint.

Send two copies of the complaint to the violator, retain one copy, and send the original to the Bureau.

When the issuing official has sufficient evidence that a violation has occurred, he or she must fill out the complaint form, give two copies to the defendant, file the original copy with the Judicial Bureau and retain one copy for his or her files. 24 V.S.A. § 1977(a).

**Every complaint must be accounted for! If a complaint is spoiled, or if the issuing official decides not to issue it after having begun to fill it out, the complaint must be marked “void” in large letters and then all four copies must be returned to the Judicial Bureau. 24 V.S.A. § 1977 (b).**

## INFORMATION NEEDED TO FILL OUT A COMPLAINT

**Municipal Name and Number.** The first space on the complaint asks for the name of the municipality and the municipal number. The Judicial Bureau will assign each municipality a number. You can telephone them at 802-295-8869 to have a number assigned.

**Defendant's Personal Information.** The complaint form requires the issuing official to include the defendant's name, address (legal and mailing), phone numbers, date of birth, sex, and social security number (optional). When the defendant is a college student, try to get both their local and permanent addresses. This information should be obtained from the defendant, but there may be times when the issuing official will need to find some of it out by him/herself, prior to issuing the complaint. In addition, since the defendant may be an individual, an organization, or a corporation, the issuing official should take care to issue the complaint to the correct individual or entity (the person or entity who has created the problem or has control over it). When in doubt, issue individual complaints to each possible defendant.

**Information about the Offense.** The complaint must include the date, time and place that the violation occurred. In addition the issuing official must include a description of the activity that constituted the violation, and cite the official name and number (if any) of the municipal ordinance that was violated. There is also space to include an "offense code." (See the list of codes in Appendix H of this handbook.) The form also requests that the official indicate if there are any related civil municipal cases (insert complaint number) that can be joined for hearing, and whether there is a pending related criminal case. Finally, there is a second sheet on which the issuing official should indicate all facts and circumstances related to the violation, including statements made by the defendant, names and addresses of witnesses, where the violation was observed, etc.

**Requested Remedy.** The issuing official must indicate the amounts of the full penalty and the waiver penalty amounts for the particular offense and whether an order to cease is being requested.

**Statement of Service.** The issuing official must indicate on the complaint whether the complaint was delivered in person or by first-class mail, the name of the person to whom it was delivered, and the date of delivery.

**Information About Issuing Official.** The complaint must include the name, official number and signature of the issuing official. The Judicial Bureau assigns the official number to the issuing official. Complaints will not be processed without this number.

**Soldier's and Sailor's Relief Act.** The issuing official must ask or determine if the defendant is on active military duty and complete an affidavit indicating his/her findings relative to that issue. That affidavit must be completed and filed with the complaint.

An **issuing official** must be familiar with the complaint form so that he or she knows what information is required prior to issuing the complaint. Much of the information can be obtained

from the defendant, but the official may need to gather additional information about the violation from direct observation or from witnesses prior to issuing the complaint.

**Official Numbers.** Prior to issuing any complaints, the issuing official must find out from the custodial official the number assigned to the municipality and the issuing official's own personal official number. A law enforcement officer who already has a personal number issued in his or her capacity as a constable, sheriff or state police officer should use that number and need not apply for a different number for municipal ordinance enforcement purposes.

Because both the municipality's official number and the issuing official's personal number are necessary to enable the Judicial Bureau to process complaints, they must appear on every complaint that is issued.

**Defendant's Personal Information.** In addition to requiring the name and number of the municipality and of the issuing official, the complaint form requires the issuing official to include certain personal information about the defendant, including his, her or its name, address (mailing and legal), phone numbers, sex, date of birth and social security number (optional). In most cases this information can be obtained from the defendant at the time the complaint is issued. However, there may be some instances in which the issuing official will have to research the identity of the defendant or their legal or mailing address prior to issuing the complaint. In the special case where the defendant is a college student, it is best to get both their local and home addresses.

This is particularly true when the defendant is a corporation, association or other business entity. Information about the official names and addresses of individuals who can accept service of the complaint on behalf of these non-person defendants can be obtained by calling the corporation division of the office of the Vermont Secretary of State at 802-828-2386.

Court rules require the issuing official to make a reasonable inquiry as to the defendant's mailing address. This may consist of asking the defendant if the address shown on his or her driver's license is accurate and, if not, informing the defendant that an accurate address is needed. The issuing official should inform the defendant that the address that appears on the complaint is the address to which all further notices will be sent unless the defendant informs the Bureau of another address.

A defendant's personal information will often be well known to the official who is issuing the complaint or can be easily obtained from the defendant. However, there may be instances in which the issuing official does not know certain information and the defendant is unwilling to provide the information. In that case, the person who is accused of the ordinance violation may be detained by a law enforcement officer if:

1. The officer has reasonable grounds to believe the person has violated a municipal ordinance; and
2. The person refuses to identify him or herself satisfactorily to the officer when requested to do so.



If the person identifies him or herself, the officer must release him. However, if he or she continues to refuse, he may be taken to a District Court judge where he may find himself subject to civil contempt proceedings. 24 V.S.A. § 1983.

It is important to note that the statute specifies that only a “law enforcement officer” can detain the person or take them off to District Court. Therefore, if the issuing officer is not a law enforcement officer, they will be unable to detain the person or take them to court.

Municipalities may vote to prohibit constables from exercising any law enforcement authority. 24 V.S.A. § 1936a.

The identifying information required for the complaint serves three principal purposes: to identify the defendant, to enable the court to contact the defendant about court dates and proceedings, and to assist the municipality in any collection action it might need to take against the defendant. An issuing official who is working with an uncooperative defendant should seek to include information that will allow all three of these purposes to be accomplished. For example, so long as the defendant is positively identified by the complaint (even by a nickname) and an address is included (a work address will probably suffice) which will enable the Bureau to contact the defendant about court dates, the municipality will probably not be penalized for the defendant’s refusal to cooperate in providing the requested information.

**Information About the Offense.** The complaint requires the issuing official to include specific information about the alleged offense, including the name, number and section (if any) of the ordinance that was violated, the date, time and place of the violation and a description of the acts of the defendant that constituted the violation. In addition, the “offense code” for the violation should be entered. (For a list of offense codes, see Appendix H of this handbook.) Most of the information about the offense can be filled in at the time the complaint is issued. However, prior to issuing the complaint, the issuing official should obtain the name, number, and specific section of the ordinance that was violated. In addition, the official should be familiar with the elements of the particular offense so that he or she can be sure to include in the complaint all of the facts necessary to establish that the violation occurred.

If the particular offense is related to other offenses for which there are outstanding complaints, or, if there is a related criminal action pending, the official should indicate this. The complaint form has a space for the issuing official to include the complaint numbers of related offenses so that if the charges on those complaints are contested they may be joined for a single hearing.

Finally, the complaint has a space for the official to make notes. These notes should be filled in at the time the complaint is issued, and should include all relevant facts of the particular situation including any specific acts or statements of the defendant, observations of the official and the names and statements made by any witnesses to the events leading up to the violation. An issuing official who does a good job recording the details of the offense at the time of its occurrence will be at a great advantage later at the hearing when memories may have faded. The official need prepare no additional report or affidavit.

**Requested Remedy.** On the complaint form the official must indicate the waiver fine amount for the particular offense, and whether or not an order to cease is being requested. It makes sense to always request an order to cease since, in the event the defendant continues the violation, it will make it easier for the municipality to obtain an injunction from the Superior Court.

**Statement of Service.** The complaint form requires the issuing official to indicate to whom the official served the complaint, the date it was served, and whether service was by personal delivery or by first-class mail.

**Soldier's and Sailor's Relief Act.** The Soldier's and Sailor's Relief Act is a federal law enacted in 1940 to protect people in active service from having default judgments entered against them when their military duty resulted in their inability to appear in court. Thus, whenever a complaint is issued, the issuing official must ask the defendant to sign a statement indicating whether he or she is in active service in the military. Note that if the defendant would not cooperate by answering that question but the issuing official knew the individual was not in active service, he or she can indicate this on the form.

At a later time, but prior to sending the original complaint to the Bureau, the official must sign an affidavit (in front of a notary) that he or she asked the defendant if the defendant was on active duty and the defendant indicated that he or she was not. This means that the copies of the complaint given to the defendant will not have this affidavit signed. This may be confusing for the defendant, but has no bearing on the validity of the complaint so long as the affidavit is signed and notarized on the original complaint form, which is sent in to the Bureau.

**Serving the Complaint.** The issuing official must "serve" the defendant by providing the defendant with two copies of the complaint. The defendant can be given the complaint in person ("in hand"), or it can be sent by first-class mail. Although not required by law, when serving by mail it make sense to use certified mail, return receipt requested, so that you have proof of service in case there is a question at a later date.

The rules that regulate the Judicial Bureau do not specify to whom complaints may be delivered, but it is likely that the Bureau will simply follow the Rules of Civil Procedure. Thus, a municipal complaint that is delivered "in hand" may be presented to the named defendant or his or her attorney (if the defendant is being represented by an attorney in the matter), or by leaving it at the individual's office with a person who is in charge, or at the individual's dwelling with a person of suitable age and discretion. (See Rules of Civil Procedure 5).

If the defendant is a corporation, the complaint must be served on an officer of the corporation (president, vice-president, etc. or the board of directors) or on the individual who is designated as the registered agent for the corporation. The name and address of the registered agent (usually an attorney) and the corporate officers can be found by calling the Vermont Secretary of State's Office, 800-439-8683. (See District Court Civil Rules No. 80.6: Traffic and Municipal Ordinance Bureau Procedures.)

Informational pamphlets explaining what the Judicial Bureau is, how it works, and what the defendant's obligations and rights are in the process, are included with the complaint books each municipality receives. A pamphlet shall be given to the defendant when a complaint is issued.

The issuing official must send the original complaint to the Judicial Bureau after the Soldier's and Sailor's Relief Act affidavit has been signed. Once the Bureau receives the complaint, it will set up a file and begin to process the complaint.

### **C. REASONS A MUNICIPAL COMPLAINT MAY BE INVALIDATED**

Complaints may be returned as defective if:

- The name of the municipality is missing.
- The defendant's date of birth is missing.
- The municipal number is missing.
- The date on which the violation occurred is missing.
- The amount of the fine or waiver penalty is missing.
- The affidavit concerning the Soldier's and Sailor's Relief Act section has not been completed.

### **D. ENFORCEMENT OF MUNICIPAL TRAFFIC VIOLATIONS IN THE JUDICIAL BUREAU**

The Judicial Bureau has jurisdiction over "traffic violations" as well as civil ordinance violations. 4 V.S.A. § 1102(b)(1). A traffic violation includes a violation of any municipal ordinance relating to the operation or use of motor vehicles or to use of the streets or highways except parking violations. 23 V.S.A. §§ 2201 and 2302 (a)(4). There are some differences in the enforcement of municipal traffic ordinances and other civil ordinances.

The complaint form, which must be issued for a traffic violation, is the Uniform Traffic Complaint. It contains most of the same information as the municipal complaint form and is filled out in essentially the same way. 23 V.S.A. § 2203.

Qualified law enforcement officers should enforce traffic violations. In some cases, those officers must have special certifications. For example, monitoring of speed by radar requires special training and certification. If issuing officials for enforcing traffic violations are not qualified to do their job, the complaints will most likely be dismissed.

The appearing official for a traffic violation hearing before the Judicial Bureau must be "the law enforcement officer or the state's attorney who issued the traffic complaint." D.C.C.R. 80.6 (1). Prior to the hearing, the officer may dismiss a traffic complaint with or without the approval of his or her supervisor. If the state's attorney is acting on behalf of the municipality, he or she may dismiss the traffic complaint. At the time of the hearing, the officer may dismiss a complaint with the approval of the hearing officer. The state's attorney may also dismiss a traffic complaint at the time of the hearing. D.C.C.R. 80.6 (f) (1 & 2).

Penalties for traffic offenses include both fines and points. For specific and up-to-date information, see [www.state.vt.us/courts/vtb/trfcmp.htm#21](http://www.state.vt.us/courts/vtb/trfcmp.htm#21).

## **E. DEFENDANT'S RESPONSE TO THE COMPLAINT**

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

1. Admit and pay fine.
2. Not contest charge and pay fine.
3. Deny offense and request hearing.
4. Fail to respond, resulting in a default judgment.

4 V.S.A. § 1105.

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.

If the defendant wishes to contest the allegations and be heard by the Judicial Bureau, he or she must check the appropriate box, sign the complaint and mail it to the Bureau.

If the defendant does not contest or admits the allegations, he or she must check the appropriate box, sign the complaint and mail it to the Bureau with payment in the amount of the waiver penalty.

**Default judgment.** Failure of the defendant to respond to the complaint within 20 days will result in a default judgment being entered against him or her. Likewise, if the defendant contests the allegations and fails to appear for the scheduled hearing a default judgment will result. (Such default judgment will only be ordered if the issuing or appearing officers attends the hearing.) In the case of a default judgment, the defendant will be ordered to pay the full penalty. A default judgment will, in most cases, mean that the defendant forfeits his or her right to a de novo and/or jury appeal of the case.

## **F. HEARING IN THE JUDICIAL BUREAU**

**Appearing Official.** It is the appearing official who represents the municipality before the Judicial Bureau in the event a defendant chooses to contest the complaint. This official must:

- Present the town's case against the defendant.
- Produce a certified copy of the ordinance.
- Explain the ordinance as needed.
- Describe the events that occurred leading up to the issuance of the complaint.
- Examine and cross-examine witnesses (if any).
- Indicate the type of penalty the town is seeking in the matter.
- Amend the complaint if necessary to reach a settlement.

See page 17 of this Handbook for more information about the role of the appearing official.

The municipality does not have to hire an attorney to represent the town, although it may do so if it chooses. Ordinarily it will not be necessary to involve legal counsel since the Judicial Bureau is designed for use without attorneys. However, in certain instances the appearing official may choose to consult an attorney in the preparation of the case, or the town may choose to hire an attorney to represent the town in particularly complex cases or in cases involving legal issues that may not be easily resolved.

### **SOME REASONS TO HIRE AN ATTORNEY**

1. The defendant is represented by counsel.
2. The defendant raises complex legal issues.
3. The case involves complex legal and/or factual issues.
4. The town or the appearing official believes it is in the town's best interest to be represented by counsel.

**Scheduling.** 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. 4 V.S.A. § 1106 (a).

The Bureau will generally schedule all related matters together and will try to schedule all of one issuing official's complaints at one time so that the official will not have to make multiple trips to the court.

**REMEMBER:** It is important to be on time for all scheduled hearings, as failure to be present at the time the Bureau begins the case will result in a dismissal of the complaint.

**Conduct of the Hearing.** The Judicial Bureau is designed to operate without lawyers. Thus, the hearings are conducted somewhat informally, with the hearing officer asking questions whenever he or she feels the need for more information.

Most hearings will be conducted using the following procedure:

- **The prosecutor goes first.** The appearing official is the prosecutor at the hearing and will be asked to be the first to speak about the case and present evidence, including witnesses.
- **Copies of the relevant section of the ordinance or other law involved must be provided for the defendant and the hearing officer.** The prosecutor must have a **certified copy** of the entire ordinance (not just the particular section) available for the hearing officer to examine, upon request.

Failure to bring a certified copy of the ordinance to the hearing may result in the ticket being dismissed. It is also advisable to bring certified copies of documents showing that the ordinance was properly adopted, since an allegation that the town failed to follow the necessary steps may also result in the case being dismissed.

- **Witnesses shall be sworn in by the court.**
- **All documentary evidence must be given to a court officer to label as exhibits.** Any documentary evidence that the appearing official or the defendant wishes to present must be marked as an exhibit and left with the court. The appearing official should bring to the hearing an original and two copies of all documentary evidence so that the town may retain one copy in its files and give one copy each to the court and the defendant.
- **Witnesses may provide narrative testimony.** All witnesses, including the issuing official, will simply be asked to tell their stories. Witnesses should be brief and to the point. The testimony of witnesses is not limited to specific responses to particular questions as in other courts, although an attorney or appearing official who wishes to conduct the presentation of testimony by asking specific questions will be allowed to do so.
- **The hearing officer may ask questions to help clarify the testimony.** Hearing officers often will direct the testimony or follow up on testimony with questions designed to help clarify the statements made by the witness. In extraordinary circumstances, the hearing officer may even order a hearing continued until a later date so that additional witnesses or physical evidence may be presented to the court.
- **The defendant may present his or her case.** The defendant will be given an opportunity to question all of the town's witnesses and will then be asked to tell his or her side of the story and present any evidence, including witnesses, to rebut the town's allegations.
- **The prosecutor may question the defendant and the defendant's witnesses.** The questions addressed to them should be polite and non-accusatory and should not be repetitive.
- **The hearing officer will rule on the case.** After all of the evidence is presented, the hearing officer will rule on the matter. If the ruling is favorable to the municipality, the hearing officer will also impose a penalty. Such penalty must be in an amount not less than the waiver penalty and not more than the full penalty provided for in the ordinance. The hearing officer will look to see if the ordinance specifies a particular penalty amount, and if not, he or she may ask the appearing official what is customarily sought in cases of this type. The appearing official can then state what he or she believes is an appropriate penalty in the case (not to exceed \$500 per offense) and should be prepared to show that there is some basis for the amount requested. **Do not argue with the ruling of the hearing officer. If you do not agree with the decision, speak to your municipal attorney about filing an appeal.**
- **The hearing officer may take the matter under advisement.** In some instances, instead of immediately ruling on the matter, the hearing officer will "take the matter under advisement." This means that the hearing officer will think about the case and perhaps research some legal issues before making a ruling. The parties will receive the Bureau's decision via mail.

**Proving the Case.** The municipality has the “burden of proof.” This means the appearing official (or the attorney representing the town, if there is one) must prove the elements of the offense and establish the facts that underlie the offense by “clear and convincing evidence” or the ticket will be dismissed.

The “elements of the offense” are generally spelled out in each particular ordinance. It includes the fact that a properly adopted ordinance exists prohibiting or regulating the conduct in question and the fact that the defendant engaged in the prohibited conduct on the particular date and at the particular time stated on the complaint. For example, the elements of the offense “open burning of trash” may include that the individual charged was burning the prohibited materials in a place outside of his or her home at the particular date, time and place stated on the municipal complaint.

### **COURTROOM DECORUM**

Although the hearing is relatively informal, ordinary courtroom decorum is required of all participants in the process. This means the following courtroom etiquette should be followed:

- **Neat appearance.** The appearing official and municipal witnesses should be neatly dressed, polite and respectful to the court, to witnesses and to the defendant.
- **Remain seated unless speaking.** The appearing official will be seated at a table in the courtroom and should remain seated except when speaking to the hearing officer (unless the hearing officer indicates otherwise), and except when the hearing officer enters and leaves the room.
- **Address participants formally.** The witnesses and defendant should all be addressed formally (by last names, Sir and Madam). The hearing officer should be referred to as either “Your Honor” or “Judge.”
- **Never interrupt another person who is addressing the court.** Only one person may speak at a time, and all comments are addressed to the hearing officer. The hearing officer will not be pleased if the appearing official gets involved in a debate with the defendant or a witness. If you believe the defendant or witness to be lying, instead of interrupting, write yourself a note and respond to the comments when the defendant or the witness is done. Even if provoked, look to the hearing officer to maintain control of the courtroom.
- **Try not to be repetitive in your testimony or statements to the court.** When providing testimony, making final statements, or questioning the defendant, try not to repeat testimony. If there is nothing new to say, decline to speak and indicate to the court that the municipality’s testimony is complete.

“Clear and convincing evidence” is defined as “evidence that establishes that the truth of the facts asserted is highly probable.” Thus, the appearing official must provide evidence that convinces the hearing officer that the facts asserted on the complaint most probably occurred.

This is done through the testimony of witnesses and through the submission of other documentary evidence (i.e. letters, photographs, etc.).

**Rules of Evidence.** When presenting his or her case, the appearing official will present evidence to the court. This evidence can consist of his or her own testimony or the testimony of others. It may also consist of photographs, letters and other relevant documents. Only evidence that is relevant to proving the case against the defendant will be allowed. Thus, evidence that the defendant is a general “ne’er-do-well” will not be permitted unless it has specific bearing on the ordinance violation at issue.

**“Hearsay” evidence.** Hearsay is testimony given by Person A that merely recites statements made by Person B who is not present to testify. Hearsay is generally not admitted in court because the original source, Person B, is not available to be sworn or to testify to having made such statements. Therefore the probable truthfulness or falseness of those statements cannot be reliably established.

Hearsay evidence will probably not be permitted. Thus, the appearing official may only say “The defendant’s neighbor, Ms. Thomas, called me to report the ordinance violation. She said that the defendant was burning household trash and construction debris in a pile in his yard.” So long as that information is offered to explain why the official began to investigate the violation, it will be admissible. If Ms. Thomas’s observations are to be considered evidence that the defendant actually engaged in the alleged conduct, that evidence must be presented by having Ms. Thomas testify and be available for cross-examination.

**Originals and Certified Copies.** Whenever the appearing official wishes to present documents to the court as evidence, he or she should be sure to bring the original and two copies of the document to the court. The original must be presented to the court for the file and a copy should be available for the defendant, plus one to retain in the municipal file. If, for some reason, it is impossible to bring the original document (for example, if it is minutes of a selectboard meeting) then the official should bring a copy of the document that is certified by the clerk of the municipality to be a true and accurate copy of the original.

**Defendant’s Evidence.** If the defendant appears in court with evidence or legal arguments that you were unprepared for (for example, evidence that the ordinance was not validly adopted or legal arguments about the ordinance’s constitutional validity), the best course of action is to inform the hearing officer that you were unaware that the defendant was going to make such arguments and were therefore not prepared to respond. Then respectfully request a continuance. Note that if the hearing officer believes that the evidence or legal argument presented by the defendant was something the appearing official should have anticipated, or if the inability to respond was due to sloppiness or lack of preparation, the hearing officer may deny the request for continuance, penalizing the municipality for its failure to prepare. However, because the court is set up to be used without attorneys, if the defendant makes legal arguments in his or her own defense, or if the defendant appears represented by an attorney, the hearing officer will generally allow a continuance so that the appearing official can seek legal counsel.



**Prehearing Discovery.** No pretrial discovery is allowed without permission of the Bureau. This means if the defendant wishes to look at the letters or documentary evidence in the appearing official's file, the defendant will have to wait until the hearing and request that the hearing officer order such disclosure. The hearing officer may order a continuance to allow the defendant access to information that will aid in the preparation of his or her defense.

The defendant can get a copy of the ordinance that he or she allegedly violated from the town clerk. Upon request, all other documents that are public records should also be made available to the defendant prior to the hearing.

The Access to Public Records Act, 1 V.S.A. § 317(14), allows the municipality to withhold from public disclosure all records relevant to litigation to which the municipality is a party, provided the records become available if they are ruled discoverable by the court, and after the case has been resolved and there are no more appeals left. However, if a defendant requests to see records that are ordinary public records and not created specifically for the case (for example, a copy of the ordinance), those documents should be made available to him or her.

**Voiding or Amending of Complaint.** There are three different laws or rules that allow officials to amend or void a complaint.

1. A law enforcement officer, with the approval of his or her supervisor, may void or amend a complaint by so marking it and sending it to the Judicial Bureau before the hearing. At the hearing, the officer may amend or void the complaint, with the approval of the hearing officer. 4 V.S.A. § 1106 (d).
2. The municipal officer may void or amend a municipal complaint issued by him or her by so marking it and sending it to the Bureau. 24 V.S.A. § 1977 (b). At the hearing, the appearing official for the municipality may dismiss or amend the complaint with the approval of the hearing officer. 24 V.S.A. § 1979 (b).
3. Prior to the date of the hearing, the officer may dismiss a traffic complaint with the approval of the supervisor, or may dismiss a municipal complaint (non-traffic ordinance violation) on his or her own authority. At the hearing the officer may dismiss a complaint with the approval of the hearing officer. D.C.C.R. § 80.6 (f).

Looking at these three laws or rules, it appears that, prior to the hearing, the issuing official has the authority to amend or dismiss (void) a complaint either with or without the approval of his or her supervisor. The supervisor of an appointed municipal official (e.g. a health officer or zoning administrator) would most likely be the selectboard. An elected constable probably has no supervisor. A police officer acting for the town is presumably supervised by his commanding officer.

At the time of the hearing, the provisions of the law probably mean that only the appearing official has the authority to amend or dismiss the complaint, with the approval of the hearing officer.

**Default Judgment.** If the defendant fails to respond or does not appear at the hearing, the court will issue a default judgment against the defendant and will order the defendant to pay the full penalty provided for in the ordinance. This dismissal will only occur if the municipal officer (prosecutor) appears.

The defendant will be notified of the default judgment by first-class mail and, although this judgment will be a final decision of the court, the defendant will retain the right to appeal the decision to District Court.

**Dismissal of the Complaint.** If the appearing official fails to appear at the hearing the traffic ticket will be dismissed “with prejudice.” This means that the dismissal will be final and that particular complaint cannot be re-filed. (This does not mean that a new complaint cannot be issued and filed in the case of a subsequent violation.)

## IV. APPEALS

Under authority of 4 V.S.A. § 1107, the decision of the Judicial Bureau hearing officer may be appealed to the District Court.

**Time for Appeal.** A party wishing to appeal a decision of the Judicial Bureau must file its appeal within 30 days of the final judgment of the Bureau. A party wishing to cross-appeal has an additional 14 days after the date the original notice of appeal is filed. VRAP 3 and 4 and District Court Civil Rule 80.6(i).

**Final Judgment.** A decision of the Judicial Bureau becomes a final judgment ten days after the hearing officer’s findings and judgment have been delivered or mailed (by first-class mail) to the parties. D.C.C.R. 80.6(h).

**Where to File the Appeal.** The notice of appeal must be filed in the Judicial Bureau, which will forward the notice, along with the filing fee and the Bureau’s records, to the District Court in the county in which the complaint was issued. D.C.C.R. 80.6(i).

**Filing Fee.** The party that appeals will have to pay a \$75 filing fee to the District Court. 32 V.S.A. § 1431(d); D.C.C.R. 80.6(i).

**Notice of Appeal.** The notice of appeal must specify the parties taking the appeal, must designate the judgment, order, or part of the judgment or order that is being appealed, must name the court to which the appeal is taken, and must be signed by the party that is appealing or the attorney representing that party. See VRAP 3(d).

**Service of the Notice of Appeal.** The clerk of the Judicial Bureau will serve notice of the appeal on the other party by mailing a copy of the notice of appeal to the individual or his or her lawyer if the municipality appeals, or to the custodial official, the appearing official or the municipal attorney (if the municipality had been represented in the hearing) if the defendant appeals the decision of the Bureau. D.C.C.R. 80.6(i).

**Appeal on the Record, De Novo Review and Trial by Jury.** The District Court will review the matter “on the record” unless the defendant is the appellant and he or she requests *de novo* review. An appeal on the record involves a review of the proceeding below (a review of the transcript of the hearing in the Bureau). The judge will allow the parties to make legal arguments but will not allow new evidence to be presented. D.C.C.R. 80.6(i)(2).

In contrast, *de novo* review involves retrying the case in the new tribunal. Each party will present its evidence to the District Court and that Court will make a fresh determination of the matter. D.C.C.R. 80.6(i)(3).

The defendant may also request a jury trial. If there is to be a jury trial, it will be important to notify the municipality’s attorney so that the case can be adequately prepared for presentation to the jury. D.C.C.R. 80.6(i)(3).

In most cases in which the defendant receives a default judgment, they will also have forfeited their right to a *de novo* and/or jury appeal.

**Appeal to the Vermont Supreme Court.** In most cases, the decision of the District Court will be final. The Vermont Supreme Court will not ordinarily hear appeals from District Court ordinance enforcement decisions. However, if a party believes an appeal is necessary, it may make a special request to the Court to allow such an appeal, which the Supreme Court can grant if it agrees such an appeal is necessary. 4 V.S.A. § 1007(c); V.R.A.P. 6(b).

**Stay of Penalty.** During the time for filing a notice of appeal, and pending the appeal if a notice has been filed, payment of any penalty imposed shall be stayed. This means that the penalty does not have to be paid until the appeal is resolved, and then, only if it is resolved favorably for the municipality. 4 V.S.A. § 1107(a).

## V. COLLECTION OF PENALTIES

**Voluntary Payment of Penalties.** After the hearing officer or District Court 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. 24 V.S.A. § 1981(a).

**Failure to Pay.** The Judicial Bureau will send a monthly *Report of Nonpayment* to each municipality with a list of those payments that have not been made within the 30 days. (A sample report is in Appendix K of this Handbook.) All civil remedies for collection of judgments are then available to pursue delinquent penalties. These include attaching wages or property, filing or foreclosure of judgment liens; small claims actions and the filing of a civil contempt action.

**Lien on Property.** When payments have not been made within 30 days of the final judgment, recordation of such judgment in the land records of the town in which the defendant owns real or

personal property shall constitute a lien on that property (except for motor vehicles). That lien may be enforced in the same way property tax liens are enforced under 32 V.S.A. Chapter 133, Subchapter 8. 24 V.S.A. § 1981(b).

**Small Claims Court.** Small Claims Court is another court designed for use without legal counsel. The Supreme Court has established rules that provide an expedited process for collection of judgments from the Judicial Bureau. 24 V.S.A. § 1981(c). Towns interested in using this court for their collections can call the court (located in the county district court) to get the necessary forms to fill out to initiate an action. There is a small filing fee that will be added to the amount owed by the defendant in the event that the court finds in favor of the town. Note that small claims actions can involve no more than \$3,500. Small Claims Court has the power to issue writs of attachment that will enable a municipality to collect the outstanding fines by selling property belonging to the defendant.

A favorable judgment for the municipality may not be the end of the case. If the defendant does not pay, the town may have to go back to court to enforce the judgment through trustee process, attachment and financial disclosure.

**Filing motion for a contempt proceeding.** When timely payment of the penalty has not been made, the town may file a motion for a contempt proceeding through its attorney, grand juror or other designated person. The motion and an affidavit by the custodial official stating that the penalty has not been paid must be filed with the Judicial Bureau. The Bureau will then send a notice to the defendant, giving them another 20 days to pay and warning them that a contempt proceeding in the District Court will result if they fail to pay. 24 V.S.A. § 1981 (d). (A sample *Motion for Notice of Nonpayment of Judgment* and an *Affidavit of Non-Payment* are found in Appendices L and M of this Handbook.)

If the defendant still fails to pay, the Judicial Bureau will send notice to the District Court and that court will send the defendant notice of a civil contempt hearing for failure to pay the penalty that was imposed by the Judicial Bureau. 24 V.S.A. § 1981 (e).

**Collection Agency.** Some towns have had good success using the services of collection agencies. Several towns might combine to hire a single collection agency or an attorney to prosecute and collect unpaid penalties.

**Post-Judgment Settlements.** There may be some instances in which, after judgment is entered against a defendant, the town wishes to reduce a penalty amount in settlement of the matter. The appearing official should do this after consultation with the selectboard. (No consultation with the selectboard is required when the appearing official settles a matter prior to judgment being entered in a case.) When a post-judgment settlement is made, the Judicial Bureau must be notified of the settlement and all payments received must be remitted to the Bureau, which will retain \$10 and return the remainder to the municipality. 13 V.S.A. § 7251.

## VI. REPORTS AND PAYMENTS FROM THE BUREAU

**Monthly Report.** The Judicial Bureau provides monthly reports to municipalities that have issued complaints. This report will be sent to the custodial official for the town. It will include information on the status of complaints received by the Bureau during the relevant period of time.

**Payments from the Bureau.** Every month all payments received by the Bureau on complaints issued by the municipality will be remitted to the municipal treasurer with the exception of a \$10 fee per complaint that will be retained by the Bureau to pay for its administrative expenses. 13 V.S.A. § 7251. A report that this money has been remitted shall be included in the monthly report that is sent to the custodial official.

**Report of Nonpayment.** Each month the Bureau will send a report listing cases where a fine has been imposed but remains unpaid after 30 days. This will alert the municipality to the fact that it should now begin the process of civil contempt proceedings in order to collect the overdue fine.

After a municipality initiates a contempt process, payments made to the Judicial Bureau will be reported immediately to the municipality. Likewise, if the municipality or its collection agency receives a partial or full payment, the municipality *must* immediately forward the payment to the Judicial Bureau which will then notify the District Court.

## VII. SPECIAL PROBLEMS IN ORDINANCE ENFORCEMENT

### A. CONTINUING VIOLATIONS

Continuing violations are those ordinance violations that continue from day to day without interruption. For example a person who builds a house in violation of zoning setback requirements violates the ordinance in a continuous manner because the violation is uninterrupted from day to day. On the other hand, a person who allows a dog to run at large in violation of an ordinance does not violate the ordinance in a continuous manner even if the dog runs at large every day because the violation (running at large) is presumably interrupted whenever the dog returns home.

The statutes contain contradictory language that creates some uncertainty as to how violations that continue day to day should be treated by the Judicial Bureau. First, 24 V.S.A. § 1974a (a) states, “each day a violation continues shall constitute a separate offense.” Subsection (b) then provides that “. . . if the penalty for all continuing civil ordinance violations is greater than \$500, or injunctive relief is sought . . . the action shall be brought in Superior Court.”

The statutory language is confusing since, if every day an offense continues is to be considered a new violation, there could never be a “continuing violation” for the purpose of 1974a (b). It is possible that the hearing officers will decide different types of cases differently, based on the specific facts of the case.

Or, applying rules of statutory construction, the hearing officers may attempt to harmonize the provisions so that the language of 1974a (b) will not be deemed ineffective. The result might be that, although each day constitutes a separate violation, the Bureau will not address a violation that continues day to day unless the fines are for \$500 or less.

#### **TIPS FOR HANDLING CONTINUING VIOLATIONS**

- When a violation continues day to day, it is important to issue a new complaint each day the violation continues. Otherwise, the town will have a problem proving the existence of the violation on the days not ticketed, and penalties will probably be denied for those days.
- In order to avoid having the case bumped into Superior Court, the town may stop issuing complaints when the total fine amount reaches \$500.
- Note that a town cannot avoid the problem of continuing violations by a statement in the ordinance that “each day a violation continues will not be considered a separate offense; the civil penalty for the one continuing offense is \$500.” This is because 24 V.S.A. § 1974 specifies, “each day the violation continues *shall* constitute a separate offense.”

#### **B. INJUNCTIVE RELIEF**

An injunction is an action by a court that orders a person to take some action or refrain from engaging in a particular action. It is an “equitable remedy” which will only be granted by the court if the town can show that there is no adequate remedy at law. If an individual who is ordered by court injunction to act or to cease an activity fails to abide by the injunction, that person can be fined or imprisoned for contempt of court.

The Judicial Bureau does not have the authority to issue injunctions, and does not have the power to fine or imprison an individual for contempt. The hearing officers may, however, order a defendant to “cease and desist” from his or her violation of the ordinance. 24 V.S.A. § 1974a (c). If a defendant disregards a cease and desist order, the town must pursue the matter in Superior Court by requesting an injunction. The existence of a cease and desist order that has been disregarded will most likely be sufficient evidence that no adequate remedy exists at law. Note, however, that if a town fines an individual for violating an ordinance but fails to request an order to cease and desist, the Superior Court may require the town to obtain a cease and desist order before it seeks an injunction in the matter. Therefore, whenever the issuing official writes a complaint for an offense, the official should, when appropriate, indicate on the complaint form that an order to cease and desist is requested.

#### **C. ZONING VIOLATIONS**

The Judicial Bureau was not initially created with enforcement of zoning violations in mind. Rather, as an afterthought, 24 V.S.A. § 1974a (d) was added which states that “civil enforcement of municipal zoning violations may be brought as a civil ordinance violation pursuant to this section or in an enforcement action pursuant to the requirements of Chapter 117 of this title.”

The language of section 1974a (d) seems to indicate that a town that uses the process in 1974a, et seq., does not have to follow the requirements of 24 V.S.A. § 4444. This means that it is unnecessary to provide the landowner with a seven-day opportunity to cure the violation before the complaint can be issued. (Note that the provision requiring the notice and seven-day opportunity to cure states “no action may be brought *under this section* unless the alleged offender has had at least seven days’ warning notice . . .”) It is unclear, however, whether by pursuing an ordinance violation in the Judicial Bureau the town is able to charge the \$500 per day fine permitted in 24 V.S.A. § 1974a (b) or is limited to the \$100 per day fine set out in 24 V.S.A. § 4444. To be safe, a town should probably restrict the fines to \$100 per day when proceeding under 24 V.S.A. § 4444.

Before a town begins enforcing its zoning ordinances through the Judicial Bureau process, the town zoning bylaws should be amended to make it clear that violations of the zoning ordinance are civil matters, and to set the civil penalty and waiver fine amounts for the various violations. Note that it is necessary to clarify that zoning violations are civil matters because there has traditionally been some question about whether zoning violations are criminal or civil matters.

For many years, Superior Courts treated zoning violations as criminal matters and would not award fines in zoning cases, but would issue an injunction and then tell the municipality to go to District Court if they wished to seek fines. In recent years, however, all of the Superior Courts have awarded fines, and the Vermont Supreme Court held that if fines are requested, and the court finds that the defendant violated the ordinance, then the Superior Court must award some fine amount *for each day* that the offense continued. (Emphasis added.) See *Town of Sherburne v. Carpenter*, 155 Vt. 126 (1990).

In 1998 the Supreme Court directly considered the question of whether fines levied under 24 V.S.A. § 4444 are civil or criminal. *Town of Hinesburg v. Dunkling*, 167 Vt. 514 (1998). First, the Court found that the legislature did not intend such fines to be punitive but meant for them to be coercive and remedial, as civil fines are. Second, it found that the fine actually imposed by the lower court was not punitive in nature. Third, the lower court’s express purpose for imposing the fine was remedial, being designed to cover the town’s cost of enforcement. Finally, the fine did not exceed the daily limit imposed by the statute. Under those circumstances, the Supreme Court found the fines to be civil in nature.

Note that because the Judicial Bureau cannot be used for continuing violations with fines of more than \$500, and cannot provide injunctive relief, there are many instances in which the zoning administrator of the town will choose to forgo the civil enforcement process in favor of an action in Superior Court. (See the sections above discussing continuing violations and injunctions). Because many zoning violations are continuing violations, the zoning administrator who chooses to issue a complaint will have to issue a new complaint each day the violation continues, but must stop issuing complaints once the total accumulated fine amount for a specific violation reaches \$500, unless he or she decides to have the Bureau transfer the case to Superior Court.

If a landowner has violated a number of ordinances, a separate complaint should be issued for each violation. If each violation continues, new complaints should be written each day, with a limit of \$500 in fines for each offense. Thus, if a landowner has violated the zoning ordinance by building without a permit and has also violated the town's setback requirements, the zoning administrator can issue two separate complaints each day the violations continue with up to a total penalty of \$1000 per day (\$500 for each separate, continuing violation).

Hopefully, the Legislature and the courts will help to clarify when and how civil enforcement in the Judicial Bureau could best be used for zoning enforcement. Until that time, however, towns will have to use their judgment to determine which cases are best suited for the Superior Court and which cases should go to the Judicial Bureau.

#### **D. STATUTORY CONFLICTS**

**Dogs.** In the 1994 legislative session, the Vermont Legislature completely overhauled the enabling legislation that permits towns to regulate the keeping of domestic pets. That legislation included a section on enforcement that creates a civil enforcement process different from the process set out in 24 V.S.A. § 1974a. The pertinent statute, 20 V.S.A. § 3550, creates a process by which the legislative body of a town can impose civil penalties for the violation of certain statutes in 20 V.S.A. Chapter 193. It is questionable whether this includes a violation of an ordinance adopted under section 3549 of that chapter. If it does, that would create a second method of ordinance enforcement. Under section 3550, a violator may request that the legislative body hold a hearing and deliver a written decision on the matter. An appeal from the decision of the legislative body can be taken to Superior Court for a *de novo* determination. The Court has authority to issue an injunction or to order seizure of the animal.

It appears that a municipality may be able to use either the enforcement process set out in 20 V.S.A. § 3550 or the civil enforcement process set out in 24 V.S.A. 1977 et seq. to enforce dog ordinances. However, it must choose one or the other since subsection 3550 (g) states, "Imposition of a penalty under this subchapter precludes imposition of any other administrative or civil penalty under any other provision of law for the same violation." Therefore, once enforcement under section 3550 is begun, the Judicial Bureau would almost certainly not allow the case to be switched to its jurisdiction.

**Solid Waste Ordinance.** Twenty-four V.S.A. § 2297a gives municipalities special authority to enforce solid waste ordinances created pursuant to 24 V.S.A. § 2291 (12). This provision allows the legislative body to issue a solid waste order requiring a violator to come into compliance with the ordinance, abate hazards, and pay a fine of up to \$500 per violation, and up to \$100 for each succeeding day the violation continues. Enforcement of such orders may proceed to either the Environmental or Superior Court.

Note that this statute does not create an exclusive remedy for towns wishing to enforce their solid waste ordinances. If the town wishes to use the enforcement provisions of 24 V.S.A. § 1974a instead of those provisions set out in 24 V.S.A. § 2297a, its ordinance must clearly reference section 1974a as its authority.



**Anti-Littering Statute.** Municipalities have authority to enforce the state’s anti-littering statute through the Judicial Bureau. 24 V.S.A. § 2201. That statute prohibits throwing, depositing and dumping refuse. Violators are subject to a civil penalty of not more than \$500. In addition, they may be ordered to do roadside cleanup and may have their driver’s license or their hunting or fishing license suspended.

It appears that the best way to do this would be to adopt a brief ordinance, which includes the following provisions:

- The Town of \_\_\_\_\_, under authority of 24 V.S.A. § 2201, shall enforce the provisions of that statute as a civil violation through the Judicial Bureau under the provisions of 4 V.S.A. Chapter 29 and 24 V.S.A. Chapter 59;
- The official responsible for custody of the complaint forms shall be the [town clerk, town manager, chief of police];
- The official[s] authorized to issue complaints in this matter shall be [the constable, health officer, police, sheriff];
- The official[s] authorized to appear in court on behalf of the Town of \_\_\_\_\_ in this matter shall be [ \_\_\_\_\_ ];
- Penalties shall be those prescribed in 24 V.S.A. § 2201.

The ordinance should be adopted as described in 24 V.S.A. Chapter 59 and should include the usual provisions regarding purpose, severability and effective date.

## **VIII. CONCLUSION**

Ordinance enforcement is an ongoing challenge to Vermont’s municipalities. The creation of the Judicial Bureau (originally the Traffic and Municipal Ordinance Bureau) will enable municipalities to successfully enforce their ordinances in a timely and cost-effective manner.

For more information or assistance on any of the topics discussed in the preceding pages, you can call the VLCT Municipal Law Center at 800-649-7915, or check [www.state.vt.us/courts/vtb](http://www.state.vt.us/courts/vtb).

## APPENDIX A

### AUTHORITY TO ADOPT ORDINANCES

Municipalities may adopt ordinances only when the Legislature has given them authority to do so. For example, they may regulate the running at large by dogs (20 V.S.A. § 3549) but they may not regulate the ownership of firearms because there is no statute which grants such authority. Rarely, the statutes explicitly prohibit the adoption of ordinances on certain matters. (Examples are 13 V.S.A. § 2808, obscenity, and 18 V.S.A. § 613 (b), design standards for on-site sewage systems.)

The general process for adopting ordinances comes from 24 V.S.A. Chapter 59, which is found on page 62 in the appendices of this Handbook. There are a few provisions in the statutes that provide for a different process of adoption. (An example is 24 V.S.A. §§ 3103-3105, adoption of building codes.)

Following is a list of subjects which may be regulated by ordinance.

STATUTE	SUBJECT MATTER
1 V.S.A. § 312(c)(1)	Meeting times
5 V.S.A. § 1003	Airport regulation
9 V.S.A. § 3061	Licensing restaurants, inns, hotels
9 V.S.A. § 3862	Licensing pawnbrokers
9 V.S.A. § 4461(g)	Rental security deposits
10 V.S.A. § 505	Signs for tourist information services
10 V.S.A. § 564	Air pollution control
10 V.S.A. § 6622	Solid waste source separation
18 V.S.A. § 613	Health hazards, public health risks
18 V.S.A. §§ 1428, 1746	Smoking
18 V.S.A. § 4449	Bakeries
20 V.S.A. § 3549	Dogs
23 V.S.A. § 1007	Local speed limits
23 V.S.A. § 1108	Parking and traffic control
23 V.S.A. § 1753	Parking
23 V.S.A. § 3210	Snowmobiles
23 V.S.A. § 3506, 3510	All terrain vehicles
24 V.S.A. § 1121	Personnel administration
24 V.S.A. Chapter 59	General authority/procedure to adopt ordinances
24 V.S.A. § 2031	Jitney/taxi operation
24 V.S.A. § 2151	Curfew
24 V.S.A. §§ 2231-2233	Trailer parks
24 V.S.A. § 2246	Junkyards
24 V.S.A. § 2291 (1)	Sidewalks and bike paths
24 V.S.A. § 2291 (2)	Snow removal from sidewalks
24 V.S.A. § 2291 (3)	Buildings, plants on public property
24 V.S.A. § 2291 (4)	Operation/use of vehicles
24 V.S.A. § 2291 (5)	Pedestrian traffic
24 V.S.A. § 2291 (6)	Utility poles, wires, pipes, etc. on public property
24 V.S.A. § 2291 (7)	Signs
24 V.S.A. § 2291 (8)	Discharge of firearms

## APPENDIX A

STATUTE	SUBJECT MATTER
24 V.S.A. § 2291 (9)	Vendors, peddlers, etc.
24 V.S.A. § 2291 (10)	Dogs
24 V.S.A. § 2291 (11)	Entertainment of various types
24 V.S.A. § 2291 (12)	Solid waste
24 V.S.A. § 2291 (13)	Clean/repair dangerous properties
24 V.S.A. § 2291 (14)	Public nuisance
24 V.S.A. § 2291 (16)	Name/number streets and lots
24 V.S.A. § 2291 (17 & 18)	Alcoholic beverages in public
24 V.S.A. § 2291 (19)	Telecommunication facilities
24 V.S.A. § 2291 (20)	Conflict of interest
24 V.S.A. § 2293	Conversion of rental units to condominium units
24 V.S.A. § 2297a	Solid waste
24 V.S.A. § 2506	Trees
24 V.S.A. § 3101	Building codes
24 V.S.A. § 3315	Operation of water works
24 V.S.A. § 3617	Operation of sewage disposal systems
24 V.S.A. § 3633	On site sewage
24 V.S.A. Chapter 117	Zoning
24 V.S.A. § 5003	Housing code
24 V.S.A. § 5148	Water/sewer disconnect
24 V.S.A. §§ 5203	Impact fees
29 V.S.A. § 566	Natural gas/oil conservation
30 V.S.A. § 513	Operation of municipal cable TV system
31 V.S.A. § 301	Permits of motor vehicle racing
31 V.S.A. Chapter 9	Registration of entertainment
31 V.S.A. Chapter 11	Registration of dance halls, bowling alleys, pool halls and coasting
<b>ORDINANCES PROHIBITED</b>	
13 V.S.A. § 2808	Obscenity
18 V.S.A. § 613(b)	Design standards for on-site sewage disposal system

**NOTE:** Some of the statutes cited above do not actually delegate the power to enact ordinances, but they refer to local ordinances with approval, therefore giving an implied power to enact. (For example, 18 V.S.A. § 1428 says that local smoking ordinances are not affected by state statutes so long as the local ordinances “are at least as protective” as the statutes.)

## **APPENDIX B**

### **THE BUILDING BLOCKS OF AN ENFORCEABLE LOCAL ORDINANCE**

#### **Ordinance Drafting Guidelines for Local Officials**

Many Vermont municipalities are in the process of rewriting their ordinances to make them enforceable in the new Traffic and Municipal Ordinance Bureau, or to incorporate new state law, such as the recent wolf-hybrid licensing requirement.

As you review your existing local ordinances or draft new ones, please keep in mind that the first step in enforcing an ordinance is to draft it properly. A poorly written or improperly adopted ordinance will return to haunt the town. Following are some pointers for creating enforceable ordinances:

1. Towns may adopt ordinances only where the legislature has given that power. Therefore you must cite the authority for the ordinance adoption. A dog control ordinance would be adopted under 24 V.S.A. § 2291(10) and 20 V.S.A. § 3549.
2. An ordinance must be adopted by the proper process, which is spelled out in 24 V.S.A. Chapter 59.
3. State the purpose of the ordinance. For example, a winter parking ban may be “to promote public health and safety by facilitating snow removal in order to keep town highways clear and passable.” Then be sure that the provisions in the ordinance are designed to carry out its purpose.
4. Use clear and simple language wherever possible. Define terms which may be confusing. Many times the terms you need have already been defined in the Vermont Statutes. Check the Statutes’ index under “definitions” and you will find such terms as “domestic pet” and “sewage system.” Using the statutory definition where appropriate will make it easier for future selectboards, constables and courts to understand the ordinance and to enforce it consistently.
5. If this is an ordinance you intend to enforce through the Traffic and Municipal Ordinance Bureau, specify that it is a civil ordinance.
6. Make clear and definite just what people are expected to do or not do as a result of this ordinance. After all, an ordinance is a law which puts constraints on an individual’s actions and use of property. Laws must spell out in advance what these constraints are. If you attempt to prohibit “loitering” or “excessive noise,” your ordinance may die on the judicial chopping block of “void for vagueness.”
7. Let people know when the ordinance goes into effect with a statement such as “This ordinance shall become effective 60 days after its adoption by the \_\_\_\_\_ Selectboard. If an appeal is filed under 24 V.S.A. § 1973, the effective date shall be governed by that statute.”

## APPENDIX B

8. Add in a severability clause so that if any section is found defective the rest of the ordinance will survive. For example, “If any section or subsection of this ordinance is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, such judgment shall not affect the constitutionality or validity of the remaining sections or subsections.”
9. Spell out penalties. For example, “A person who violates this ordinance shall be fined \$50 for the first offense and \$75 for the second or any subsequent offenses. Each day of the violation shall constitute a separate offense.” For ordinances you plan to enforce through the Traffic and Municipal Ordinance Bureau, specify a “waiver fee.” Make penalties reasonable based on the seriousness of the offense. Remember, penalties are not intended to be a revenue source to supplement property taxes.
10. Be sure your ordinance is consistent with state statutes. You may make town ordinances *more* restrictive than state law but not *less* restrictive. For example, the state prohibits parking within six feet of a fire hydrant. Therefore the town may restrict parking within ten feet but may not reduce it to three feet.
11. Draft your ordinance and then put it away for a few days and/or let someone else look at it. It is amazing what errors and inconsistencies may appear later if you draft an ordinance in a hurry. Things that seemed crystal clear in the heat of creating the ordinance may be murky or even totally opaque when looked at later by you or the court.

The VLCT Municipal Law Center will be happy to provide sample ordinances whenever possible, give advice and review proposed ordinances. Finally, VLCT would appreciate copies of your adopted ordinances for its files so they may be used as models for others.

## APPENDIX C

### FREQUENTLY ASKED QUESTIONS

**1. What is the Judicial Bureau?**

It is a statewide court with special jurisdiction created to impartially resolve disputes pertaining to municipal ordinance violations.

**2. What is a municipal complaint?**

A complaint is a written allegation by a municipal official claiming a person or organization violated a municipal ordinance. Municipal ordinances pertain to animal control, public nuisances, junkyards, recycling, liquor control, health regulations, zoning and many other situations. 24 V.S.A. §§ 1971-1981, or Municipal Charter.

**3. Is a violation of a municipal ordinance a crime?**

A municipality may designate an ordinance either civil or criminal. Only civil ordinances can be heard by the Judicial Bureau. The maximum penalty for violations of civil ordinances is \$500 with *no* term of imprisonment. 24 V.S.A. § 1974(a).

**4. Must I answer the municipal complaint within 20 days?**

Yes. If you fail to return the complaint within 20 days, the Bureau will issue a default judgment against you and assess the full penalty. If you return the complaint and enter a plea of “*Not Contested*,” you must pay the waiver penalty. If you return the complaint and enter a plea of “*Contested*,” the Bureau will schedule a hearing date. 24 V.S.A. § 1979(c); 4 V.S.A. § 1105.

**5. Must I appear at the Bureau after receiving a municipal complaint?**

You have a choice. If you plead “*Not Contested*,” you may pay the penalty without appearing at the Bureau. If you plead “*Contested*,” at least one Bureau appearance will be required. 4 V.S.A. § 1105.

**6. If I plead “*Not Contested*,” may I have extra time to pay the penalty?**

If you are truly unable to pay the penalty within 20 days, you may call 802-295-8869 to request an extension.

**7. If I plead “*Contested*,” may I explain my case to a hearing officer by mail or telephone?**

No. Hearing officers will not communicate with you about the facts of the case unless you and the municipal official appear at the Bureau.

**8. May I talk with the prosecutor before appearing at the Bureau?**

Yes. The municipal official that issued the complaint is the prosecutor. You and that official may communicate about the case at any time. The name of the municipal official is on the complaint.

**9. May I hire a lawyer?**

Yes. The Judicial Bureau was designed to let you represent yourself, but you may hire a lawyer at your own expense. The Bureau will *not* appoint a lawyer to represent you at State expense.

**10. What will happen if I plead “*Contested*?”**

The Bureau will mail you and the municipal officer a notice of hearing. The notice will state the time, date and Bureau location for the hearing. A hearing is a trial by hearing officer. At the hearing, the municipality will offer testimony about the case, and then you may testify. You and the municipality may bring witnesses and exhibits. After receiving all of the evidence, the hearing officer will make a decision. The hearing officer may tell you the decision immediately or mail a written decision later. If the hearing officer decides the case in your favor, you will not be penalized. If the hearing officer decides in the municipality’s favor, you *will* be penalized. *The penalty commonly is*

## APPENDIX C

*the same as shown on the complaint, but may be higher or lower depending on the facts of your case, your record of other violations and your ability to pay.*

### **11. If I do not appear at the hearing, will I be arrested?**

No. If the municipal officer appears and you do not, the Bureau will enter default judgment for the municipality. 24 V.S.A. § 1979(c); 4 V.S.A. § 1105. You will be assessed the penalty stated on the complaint. The Bureau will mail you a notice stating the deadline for paying the penalty. If you do not pay the penalty on time, the municipality may use all lawful civil remedies to collect the penalty and enforce the Bureau's order. 24 V.S.A. § 1981.

### **12. May I have a trial by jury?**

The first trial is a hearing by a hearing officer. You or the municipality may appeal the hearing officer's decision. If you appeal, you may request a jury trial. While the appeal is pending, you will not have to pay any penalty assessed by the hearing officer, but any points imposed will not be stayed. 4 V.S.A. § 1107.

### **13. May I review a copy of the municipal ordinance?**

Yes. The ordinance is identified on the complaint. You may review a copy of the ordinance at the city, town or village clerk's office in the municipality where the violation occurred.

### **14. Must I notify the Bureau if my address changes?**

Yes. The Bureau will mail all notices to your address shown on the complaint, unless you notify the Bureau about your new address.

### **15. What is my chance of winning in the Judicial Bureau?**

The municipality has the burden of proving its allegations by clear and convincing evidence. *Clear and convincing evidence* means evidence that establishes the truth of the facts asserted is highly probable. The municipality's burden of proof in a municipal civil case is lower than the burden in a criminal case and higher than in an ordinary civil case. Depending on the facts and the law involved in your case, you may have a high or low chance of success in the Judicial Bureau. If you are having difficulty deciding whether to contest a complaint, you may want to consult an attorney.

### **16. THE NEXT STEP**

Return the Bureau's copy of the complaint with your plea. If you plead "***Not Contested***," enclose your penalty payment. Please write the complaint number on your check or money order. ***Do not send cash.*** If your address shown on the complaint is not correct, enclose your current address. Mail correspondence to:

Judicial Bureau  
PO Box 607  
White River Junction, VT 05001

For more information, please call 802-295-8869 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

# APPENDIX D

VT FISH AND GAME COMPLAINT										Form 452A Rev. 7/98		F 1001	
Hunting/Fishing/Trapping License Number										Other ID			
Last Name (print)				First				Middle Init.					
Street								Home Phone ( )					
City				State		Zip Code		Work Phone ( )					
Is this your current address? If not: Street								Telephone numbers help the court notify you if a scheduled hearing is postponed.					
City				State		Zip Code							
Date of Birth		POB	Height	Weight	Hair		Eyes		<input type="checkbox"/> Male		<input type="checkbox"/> Female		
Vehicle/Boat Reg. No.		State	Year	Make		Color		Style					
AT	Municipality			County	ON	Date		AT	Time				
The person named above did then and there commit the following violation:													
Name of violation:													
Defendant's specific conduct creating violation:													
In violation of 10 V.S.A.				Regulation No.				Violation Code					
PENALTIES		Waiver Fine/Surcharge		+	Restitution		=	Total Waiver Amount		Points			
\$					\$			\$					
Maximum fine \$1,000.00, 10 V.S.A. 4515. Restitution to F/W fund, 10 V.S.A. 4514. Points, 10 V.S.A. 4502.													
I have just and reasonable grounds to believe the person named above committed this violation.													
Dept. No.		Police Department Name						Issue Date					
Officer No.		Officer Name (print)					Officer Signature						
I was shown the schedule of fines and a description of the Vermont Point System regarding license suspensions. I am not on active duty in the military or other service of United States as included in the Soldier's & Sailor's Relief Act of 1940.										<input type="checkbox"/> Mailed			
Defendant Signature										Date			
										<input type="checkbox"/> Declined to Sign			
Soldier's & Sailor's Relief Act Affidavit: Under oath, I depose and state I am the issuing officer. When issuing the complaint, I asked Defendant if he/she was presently on active duty as defined by the Soldier's and Sailor's Relief Act of 1940. Defendant indicated he/she:													
Officer Signature										<input type="checkbox"/> WAS. <input type="checkbox"/> WAS NOT.			
State of Vermont		Sworn and subscribed before me:				Date		ORIGINAL TO COURT					
County of		(notary public)											



# APPENDIX D

<b>VERMONT MUNICIPAL COMPLAINT</b>										Form #430 Rev. 10/04		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										Telephone numbers help the court notify you if a scheduled hearing is postponed.							
City				State		Zip											
Date of Birth				<input type="checkbox"/> Male <input type="checkbox"/> Female		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				Delivered To						Date							
<input type="checkbox"/> First Class Mail																	
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							
<p align="center"><b>Soldier's &amp; Sailor's Relief Act Affidavit</b></p> <p>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.</p>																	
Official's Signature:										BUREAU'S COPY							
State of Vermont County of		Sworn and subscribed before me: (notary public)						Date:									

## APPENDIX E

### TIPS FOR MUNICIPAL OFFICIALS APPEARING IN TRAFFIC & MUNICIPAL COURT

Familiarize yourself with the rule of procedure (D.C.C.R. 80.6) and your ordinance before attending court. Make a checklist of the elements of the violation you intend to prove. Place the checklist on the table in front of you for quick reference during the hearing. Offer evidence to prove each element of the violation. Do not offer irrelevant evidence.

Thoroughly review your file before the hearing. If you need witnesses to appear, notify them immediately after receiving the court's notice of hearing. If a witness will not appear voluntarily, subpoena the person to appear. Generally, a continuance will not be granted to allow you to obtain a witness, unless you subpoenaed the witness and the witness failed to appear.

Whenever possible, cooperate with the defendant by disclosing requested information before the hearing. Disclosure may help the defendant feel the process is fair, and it may avoid continuances for the defendant to respond to unexpected evidence.

Bring a certified copy of the complete ordinance to the hearing. Also bring two photocopies of the pertinent portion of the ordinance. Give one photocopy to the defendant prior to the hearing, and offer the other photocopy as an exhibit.

Arrive at the court early enough to start your case on time. If you are not in the courtroom and ready to start at the scheduled time, your case may be dismissed. When possible, speak to the court assistant before your hearing. Give the court assistant your name and title and your witnesses' names, if any. If the court assistant has time available, ask to have your exhibits marked before the hearing.

Begin your presentation by briefly introducing yourself. State your name, title, employer, and designation to represent the municipality. Even if the judge already knows who you are, you need to introduce yourself for the defendant's benefit and to create a proper record.

Address defendants and witnesses with an appropriate title (Ms., Mr., Dr., etc.). First names are not appropriate in court, except when used to help a child or mentally impaired person understand the proceeding and feel more comfortable. Speak clearly. Tell the judge what you are asking for and then give the reasons why. If you want to dismiss a case, say "I move to dismiss because ...." If you seek a particular fine, say "A fine of \_\_\_\_\_ is appropriate because ...." Don't make the judge guess what you are asking for.

Make a professional appearance. Always speak with courtesy. Your fondness or dislike for the defendant is irrelevant. Displaying your private feelings will not help your case and may cause people to feel unjustly prosecuted. Never make remarks (not even in jest) that could be construed as showing racial, gender or religious bias. Uniformed police officers should appear in uniform. Other officials should wear business clothing. Remember, everything you say and do affects how people perceive your case.

Seek justice, not victory. Consider the facts, not the defendant's identity, in deciding how to handle a case. Do not settle or dismiss cases to build or maintain friendships. Promptly dismiss the complaint if you discover no violation occurred. Always testify fully and truthfully, and don't exaggerate.

Acknowledge weaknesses in the municipality's position and strengths in a defendant's position. Compromise when settling a case is reasonable. Remember, reasonable people can differ in their opinions.

Before the decision is announced, feel free to explain to the judge why you think the municipality should obtain judgment. After the decision is made, do not argue with the judge. If you think the judge made a mistake, the municipality's remedy is to appeal.

Maintain professional detachment. Focus on your municipality's interest in stopping and deterring violations, not your feelings about individuals.

## **APPENDIX F**

### **PERTINENT STATUTES AND RULES**

#### **VERMONT STATUTES**

##### **TITLE 1. GENERAL PROVISIONS**

###### **§ 317. Definitions; public agency; public records and documents**

(a) As used in this subchapter, “public agency” or “agency” means any agency, board, department, commission, committee, branch, instrumentality or authority of the state or any agency, board, committee, department, branch, instrumentality, commission or authority of any political subdivision of the state.

(b) As used in this subchapter, “public record” or “public document” means all papers, documents, machine readable materials or any other written or recorded matters, regardless of their physical form or characteristics, that are produced or acquired in the course of agency business. Individual salaries and benefits of and salary schedules relating to elected or appointed officials and employees of public agencies shall not be exempt from public inspection and copying.

(c) The following public records are exempt from public inspection and copying:

- (1) records which by law are designated confidential or by a similar term;
- (2) records which by law may only be disclosed to specifically designated persons;
- (3) records which, if made public pursuant to this subchapter, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the state;
- (4) records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege;
- (5) records dealing with the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal or disciplinary investigation by any police or professional licensing agency; provided, however, records relating to management and direction of a law enforcement agency and records reflecting the initial arrest of a person and the charge shall be public;
- (6) a tax return and related documents, correspondence and certain types of substantiating forms which include the same type of information as in the tax return itself filed with or maintained by the Vermont department of taxes or submitted by a person to any public agency in connection with agency business;
- (7) personal documents relating to an individual, including information in any files maintained to hire, evaluate, promote or discipline any employee of a public agency, information in any files relating to personal finances, medical or psychological facts concerning any individual or corporation; provided, however, that all information in personnel files of an individual employee of any public agency shall be made available to that individual employee or his designated representative;
- (8) test questions, scoring keys, and other examination instruments or data used to administer a license, employment, or academic examination;
- (9) trade secrets, including, but not limited to, any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it;
- (10) lists of names compiled or obtained by a public agency when disclosure would violate a person’s right to privacy or produce public or private gain; provided, however, that this section does not apply to lists which are by law made available to the public, or to lists of professional or occupational licensees;
- (11) student records at educational institutions funded wholly or in part by state revenue; provided, however, that such records shall be made available upon request under the provisions of the Federal Family Educational Rights and Privacy Act of 1974 (P.L. 93-380) and as amended;
- (12) records concerning formulation of policy where such would constitute a clearly unwarranted invasion of personal privacy, if disclosed;

## APPENDIX F

- (13) information pertaining to the location of real or personal property for public agency purposes prior to public announcement of the project and information pertaining to appraisals or purchase price of real or personal property for public purposes prior to the formal award of contracts thereof;
- (14) records which are relevant to litigation to which the public agency is a party of record, provided all such matters shall be available to the public after ruled discoverable by the court before which the litigation is pending, but in any event upon final termination of the litigation;
- (15) records relating specifically to negotiation of contracts including but not limited to collective bargaining agreements with public employees;
- (16) any voluntary information provided by an individual, corporation, organization, partnership, association, trustee, estate, or any other entity in the state of Vermont, which has been gathered prior to the enactment of this subchapter, shall not be considered a public document;
- (17) records of inter-departmental and intra-departmental communications in any County, City, Town, Village, Town School District, Incorporated School District, Union School District, Consolidated Water District, Fire District, or any other political subdivision of the state to the extent that they cover other than primarily factual materials and are preliminary to any determination of policy or action or precede the presentation of the budget at a meeting held in accordance with 1 V.S.A. § 312;
- (18) records of the office of internal investigation of the department of public safety, except as provided in section 1923 of Title 20;
- (19) records relating to the identity of library patrons or the identity of library patrons in regard to the circulation of library materials;
- (20) information which would reveal the location of archeological sites and underwater historic properties, except as provided in section 762 of Title 22;
- (21) lists of names compiled or obtained by Vermont Life magazine for the purpose of developing and maintaining a subscription list, which list may be sold or rented in the sole discretion of Vermont Life magazine, provided that such discretion is exercised in furtherance of that magazine's continued financial viability, and is exercised pursuant to specific guidelines adopted by the editor of the magazine;
- (22) any documents filed, received, or maintained by the agency of commerce and community development with regard to administration of 32 V.S.A. chapter 151, subchapters 11C and 11D (new jobs tax credit; manufacturer's tax credit), except that all such documents shall become public records under this section subchapter when a tax credit certification has been granted by the secretary of administration, and provided that the disclosure of such documents does not otherwise violate any provision of Title 32;
- (23) any data, records or information developed, discovered, collected or received by or on behalf of faculty, staff, employees or students of the University of Vermont or the Vermont state colleges in the conduct of study, research or creative efforts on medical, scientific, technical, scholarly or artistic matters, whether such activities are sponsored alone by the institution or in conjunction with a governmental body or private entity, until such data, records or information are published, disclosed in an issued patent or publicly released by the institution or its authorized agents. This subdivision applies to, but is not limited to, research notes and laboratory notebooks, lecture notes, manuscripts, creative works, correspondence, research proposals and agreements, methodologies, protocols, and the identities of or any personally identifiable information about participants in research.
- (24) records of, or internal materials prepared for, the deliberations of any public agency acting in a judicial or quasi-judicial capacity.
- (25) passwords, access codes, user identifications, security procedures and similar information the disclosure of which would threaten the safety of persons or the security of public property.
- (26) Information and records provided to the department of banking, insurance, securities, and health care administration by an individual for the purposes of having the department assist that individual in resolving a dispute with any person or company regulated by the department, and any information or records provided by a company or any other person in connection with the individual's dispute.
- (27) Information and records provided to the department of public service by an individual for the purposes of having the department assist that individual in resolving a dispute with a utility regulated by the department, or by the utility or any other person in connection with the individual's dispute.

## **APPENDIX F**

(28) records of, and internal materials prepared for, independent external reviews of health care service decisions pursuant to 8 V.S.A. § 4089f.

(29) the address of a certified participant in the address confidentiality program described in chapter 21, subchapter 3 of Title 15, except as provided in that subchapter, during the period of certification.—Amended 1995, No. 159 (Adj. Sess.), § 2; No. 167 (Adj. Sess.), § 29; No. 182 (Adj. Sess.), § 21, eff. May 22, 1996; No. 180 (Adj. Sess.), § 38; No. 190 (Adj. Sess.), § 1(a); 1997, No. 159 (Adj. Sess.), § 12, eff. April 29, 1998; 1999, No. 134 (Adj. Sess.), § 3, eff. Jan. 1, 2001.

### **TITLE 4: Judiciary – Chapter 29. Judicial Bureau**

#### **4 V.S.A. § 1102. Judicial bureau; jurisdiction**

(a) A judicial bureau is created within the judicial branch under the supervision of the supreme court.

(b) The judicial bureau shall have jurisdiction of the following matters:

- (1) traffic violations alleged to have been committed on or after July 1, 1990;
- (2) civil ordinance violations alleged to have been committed on or after July 1, 1994;
- (3) minor fish and wildlife violations alleged to have been committed on or after September 1, 1996;
- (4) violations of 7 V.S.A. § 1005(a), relating to possession of tobacco products by a person less than 18 years of age;
- (5) violations of 7 V.S.A. § 1007, relating to furnishing tobacco products to a person under the age of 18 years;
- (6) violations of 24 V.S.A. § 2201, relating to littering and illegal dumping;
- (7) violations of 16 V.S.A. chapter 1, subchapter 9, relating to hazing; and
- (8) violations of 20 V.S.A. § § 2056a, 2056b and 2056c, relating to unauthorized disclosure of criminal record information.
- (9) violations of 7 V.S.A. § 656, relating to illegal possession of alcoholic beverages.
- (10) violations under 7 V.S.A. § 658(c)(1), relating to an employee of a second class licensee selling alcohol to a minor during a compliance check.

(c) The judicial bureau shall not have jurisdiction over municipal parking violations.

(d) Three hearing officers appointed by the court administrator shall determine waiver penalties to be imposed for violations within the judicial bureau's jurisdiction, except that municipalities shall adopt full and waiver penalties for civil ordinance violations pursuant to section 1979 of Title 24: For purposes of municipal violations, the issuing law enforcement officer shall indicate the appropriate full and waiver penalty on the complaint.—Amended 1999, No. 63, § 2; 1999, No. 120 (Adj. Sess.), § 10; No. 151 (Adj. Sess.), § 11; No. 160 (Adj. Sess.), § 6; No. 163 (Adj. Sess.), § 1a..

#### **4 V.S.A. § 1103. Venue**

Venue for violation hearings in the judicial bureau shall be in the unit of the district court where the violation is alleged to have occurred.—Added 1997, No. 121 (Adj. Sess.), § 4.

#### **4 V.S.A. § 1104. Appointment of hearing officers**

The administrative judge shall appoint members of the Vermont bar to serve as hearing officers to hear cases. Hearing officers shall be subject to the Code of Judicial Conduct. At least one hearing officer shall reside in each territorial unit of the district court.—Added 1997, No. 121 (Adj. Sess.), § 4.

#### **4 V.S.A. § 1105. Answer to complaint; default**

(a) A violation shall be charged upon a summons and complaint form approved and distributed by the court administrator. The complaint shall be signed by the issuing officer or by the state's attorney. The original shall be filed with the judicial bureau, a copy shall be retained by the issuing officer or state's attorney and two copies shall be given to the defendant. The complaint shall include a statement of rights, instructions, notice that a defendant may admit, not contest, or deny a violation, and other notices as the court administrator deems appropriate. The court administrator, in consultation with appropriate law enforcement agencies, may approve a single form for

## **APPENDIX F**

charging all violations, or may approve two or more forms as necessary to administer the operations of the judicial bureau.

(b) A person who is charged with a violation shall have 20 days from the date the complaint is issued to admit or deny the allegations or to state that he or she does not contest the allegations in the complaint.

(c) A person who admits or does not contest the allegations may so indicate and sign the complaint. The bureau shall accept the admission or statement that the allegations are not contested and accept payment of the waiver penalty.

(d) If the person sends in the amount of the waiver penalty without signing the complaint, the bureau shall accept the payment indicating that payment was made and that the allegations were not contested.

(e) A person who denies the allegations may so indicate and sign the complaint. Upon receipt, the bureau shall schedule a hearing.

(f) If a person fails to appear or answer a complaint the bureau shall enter a default judgment against the person. The bureau shall mail a notice to the person that a default judgment has been entered. A default judgment may be set aside by the hearing officer for good cause shown.—Amended 1999, No. 58, § 3; 1999, No. 160 (Adj. Sess.), § 7.

### **4 V.S.A. § 1106. Hearing**

(a) The bureau shall notify the person charged and the issuing officer of the time and place for the hearing.

(b) The hearing shall be held before a hearing officer and conducted in an impartial manner. The hearing officer may, by subpoena, compel the attendance and testimony of witnesses and the production of books and records. All witnesses shall be sworn. The burden of proof shall be on the state or municipality to prove the allegations by clear and convincing evidence. As used in this section, “clear and convincing evidence” means evidence which establishes that the truth of the facts asserted is highly probable. Certified copies of records supplied by the department of motor vehicles and presented by the issuing officer or other person shall be admissible without testimony by a representative of the department of motor vehicles.

(c) The hearing officer shall make findings which shall be stated on the record or, if more time is needed, made in writing at a later date. The hearing officer may make a finding that the person has committed a lesser included violation.

(d) With approval of his or her supervisor, a law enforcement officer may void or amend a complaint issued by that officer by so marking the complaint and returning it to the bureau. At the hearing, a law enforcement officer may void or amend a complaint issued by that officer, subject to the approval of the hearing officer.

(e) A state’s attorney may dismiss or amend a complaint.

(f) The supreme court shall establish rules for the conduct of hearings under this chapter.—Added 1997, No. 121 (Adj. Sess.), § 4.

### **4 V.S.A. § 1107. Appeals**

(a) A decision of the hearing officer may be appealed to the district court. The proceeding before the district court shall be on the record, or at the option of the defendant, de novo. The defendant shall have the right to trial by jury. An appeal shall stay payment of a penalty but not the imposition of points.

(b) If a decision is appealed, the state’s attorney of the county in which the violation occurred shall represent the state and the state’s attorney, grand juror or municipal attorney shall represent the municipality.

(c) No appeal as of right exists to the supreme court. On motion made to the supreme court by a party, the supreme court may allow an appeal to be taken to it from the district court.—Added 1997, No. 121 (Adj. Sess.), § 4.

### **4 V.S.A. § 1108. Civil ordinance and traffic violations; jurisdiction of assistant judges in Essex County**

(a) Subject to the limits of this section and notwithstanding any provision of law to the contrary, an assistant judge of Essex County sitting alone shall have the same jurisdiction, powers and duties to hear and decide civil ordinance and traffic violations as a hearing officer has under the provisions of this chapter.

(b) Jurisdiction and venue of civil ordinance and traffic violations heard by an assistant judge shall be in the superior court in the county in which the violation is alleged to have occurred.

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- (c) An assistant judge who elects to hear and decide civil ordinance and traffic violations shall have successfully completed at least 40 hours of training which shall be provided by the bureau. Training shall be paid for by the county, which expenditure is hereby authorized. Law clerk assistance shall be available to the assistant judges.
- (d) An assistant judge who elects to hear and decide civil ordinance and traffic violations or who elects to cease hearing these matters, shall cause the court clerk to notify the bureau and each municipality in the assistant judge's county of the judge's decision. Upon receipt of notification that an assistant judge elects to hear these matters, exclusive jurisdiction vests with the superior court and every complaint alleging a civil ordinance and traffic violation in that judge's county which is denied, or which requires a hearing, shall be set for hearing before the superior court in the assistant judge's county.
- (e) If both assistant judges elect to hear civil ordinance and traffic violations, the senior assistant judge shall make the assignment of cases to be heard by each assistant judge.
- (f) If both assistant judges do not elect to hear civil ordinance and traffic violations or elect to cease to hear these matters, civil ordinance and traffic violations in the county shall be heard in accordance with the provisions of this chapter.
- (g) An assistant judge may decline to hear a particular civil ordinance or traffic violation, in which case the violation shall be heard by a hearing officer of the bureau.
- (h) An appeal from a decision of an assistant judge shall be in accordance with the provisions of this chapter.
- (i) Civil ordinance and traffic violations that are heard by an assistant judge in Essex County shall be heard in Essex County and shall not be heard at or transferred to any other location.—Added 1997, No. 121 (Adj. Sess.), § 4.

### **12 V.S.A. – Court Procedures**

#### **12 V.S.A. § 122. Superior judge, superior court and district court**

When a party violates an order made against him in a cause brought to or pending before a superior judge or a county court or the district court after service of the order upon that party, contempt proceedings may be instituted against him before the court or any superior judge. When, in a cause no longer on the docket of the court, the proceedings are brought before a superior judge, that judge shall order forthwith the cause to be brought forward on the docket of the court and may issue concurrently with the order a summons or capias against the party. The issuing of the summons or capias and any further proceedings thereon shall be minuted on the docket.—Amended 1971, No. 185 (Adj. Sess.), § 30, eff. March 29, 1972.

#### **12 V.S.A. § 123. Imprisonment for contempt**

- (a) Imprisonment as punishment for contempt, or to enforce orders, sentences or decrees in contempt proceedings, or upon execution issued in civil process, shall be in a correctional facility maintained by or for the state.
- (b) Any person imprisoned for contempt, in addition to any other legal rights and remedies available to him, shall be entitled to a review of the contempt proceedings annually. The commissioner of corrections shall provide timely notice for the review of the proceedings of any person so imprisoned to the sentencing court. The sentencing court shall conduct a hearing and issue its order within 60 days of receipt of notice from the commissioner of corrections.—Amended 1973, No. 66.

#### **§ 5706. Court procedure; evidence**

- (a) The court may permit to be amended any process or pleading for any omission or defect therein, or for any variance between the complaint and the evidence adduced at the trial. If the respondent is substantially prejudiced in the presentation of his case as a result of the amendment, the court shall adjourn the hearing to some future time, upon such terms as he shall think proper.
- (b) Testimony of a witness as to the existence of navigation or snowmobile control signs, signals, or markings, shall be prima facie evidence that such control, sign, signal, or marking existed pursuant to a lawful statute, regulation or ordinance and that the defendant was lawfully required to obey a direction of such device.—Added 1977, No. 207 (Adj. Sess.), § 3.

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### **13 V.S.A. CRIMES AND CRIMINAL PROCEDURE**

#### **13 V.S.A. § 7251. Municipalities; payment to and liability of**

(a) Fines, forfeitures and penalties, imposed by the district or superior court or by the judicial bureau for violation of a village, town, or city ordinance shall be paid to the village, town or city, respectively, except for a \$10.00 administrative charge for each case which shall be retained by the state.

(b) Fines, forfeitures and penalties imposed by the judicial bureau for all speeding traffic violations under Title 23, chapter 13, subchapter 8 entitled “speed restrictions” on state highways and for height and width violations under 23 V.S.A. § 1431 and length violations under 23 V.S.A. § 1432 on town highways resulting from the enforcement by towns within the jurisdiction of the town shall be paid to the town by the formula set forth in subsection (c) of this section except for the administrative charge according to the provisions of subsection (a) of this section which shall be retained by the state. The enforcement by towns shall be by a town law enforcement officer or a law enforcement officer by contract with the town. Such law enforcement officer shall be certified according to the provisions of 20 V.S.A. § 2358. Nothing in this section shall be construed to limit the jurisdiction of a certified law enforcement officer. The revenue that is collected by the state pursuant to enforcement of this section by a town shall be distributed annually during the first quarter of the fiscal year immediately following the fiscal year in which the fines, forfeitures and penalties are collected.

(c) The allocation of revenue to the towns under the formula shall be updated annually by the state court administrator and shall provide that the revenue be distributed to those towns whose law enforcement efforts on state highways and town highways as specifically set forth in subsection (b) of this section have resulted in the imposition of the fines, forfeitures and penalties for all speeding traffic violations under Title 23, chapter 13, subchapter 8, entitled “speed restrictions” and for height and width violations under 23 V.S.A. § 1431 and length violations under 23 V.S.A. § 1432 provided that no town may receive more than five percent of the total revenue in any given year. The formula used for distribution shall reflect the percentage of a town’s law enforcement expenditures as it relates to the town’s total municipal taxing effort. The town’s total municipal taxing effort shall be determined by subtracting the town’s school taxes assessed from the total taxes assessed as provided each year in the annual report of the division of property valuation and review by the Vermont department of taxes. By July 31 of each year, the local legislative body of any town which had law enforcement efforts resulting in the imposition of fines, forfeitures and penalties and which wishes to participate shall submit to the court administrator the total amount of the funds spent for law enforcement in the most recently completed town fiscal year.—Amended 1973, No. 249 (Adj. Sess.), § 58, eff. April 9, 1974; 1975, No. 227 (Adj. Sess.), § 4; 1989, No. 109, § 7; 1993, No. 237 (Adj. Sess.), § 7, eff. Nov. 1, 1994; 1995, No. 77 (Adj. Sess.), § 6, eff. March 21, 1996; No. 133 (Adj. Sess.), § 1; 1997, No. 46, §§ 8, 9; 1997, No. 121 (Adj. Sess.), § 30.

### **TITLE 20: INTERNAL SECURITY AND PUBLIC SAFETY**

#### **§ 3550. Enforcement; municipal legislative body; commissioner**

(a) A municipal legislative body or an officer designated by the commissioner may impose a civil penalty of up to \$500.00 per violation in accordance with the provisions of this section.

(b) A municipal legislative body may impose penalties for violation of any provisions of subchapter 1 or 2, refusal to obtain a kennel permit under subchapter 3, or refusal to comply with an order issued by a municipal officer under subchapter 5 of this chapter.

(c) An officer designated by the commissioner may impose penalties for violation of a rule adopted by a state agency under subchapter 5 of this chapter, violation of a quarantine order issued under subchapter 5 of this chapter, or refusal to comply with an order issued by a state officer under subchapter 5 of this chapter.

(d) In determining the amount of the civil penalty to be ordered, the legislative body or officer shall consider the following:

- (1) The degree of actual or potential impact on public health, safety, and welfare resulting from the violation.
- (2) Whether the respondent has cured the violation.
- (3) The presence of mitigating circumstances.
- (4) Whether the respondent knew or had reason to know the violation existed.



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- (5) The respondent's record of compliance.
  - (6) The deterrent effect of the penalty.
  - (7) The costs of enforcement.
  - (8) The length of time the violation has existed.
- (e) When the legislative body or officer has reasonable grounds to believe that a person has violated a provision of this chapter under its purview, the legislative body or officer may issue a notice of the alleged violation, which shall be delivered to the respondent in person or mailed to the respondent by registered mail. The notice of violation shall include:
- (1) A civil penalty of up to \$500.00.
  - (2) A brief description of the alleged violation and identification of the law alleged to have been violated.
  - (3) A statement that the respondent has a right to a hearing before the legislative body or a hearing officer designated by the commissioner at no cost to the respondent, a description of the procedures for requesting a hearing and a statement that failure to request a hearing within 21 days of the date of mailing of the notice shall result in a final decision with no right of appeal.
  - (4) If applicable, a directive that the respondent take actions necessary to achieve compliance with the law.
- (f) A person who receives a notice of violation shall be offered an opportunity for a hearing before the legislative body or hearing officer, provided that the request for hearing is made in writing to the clerk of the municipality or the commissioner no later than 21 days after the date of mailing of the notice of violation. If the respondent does not request a hearing in a timely fashion, the decision shall be final and the penalty shall be payable within 35 days following mailing of the notice of violation. If the respondent does make a timely request for a hearing, the legislative body or hearing officer shall hold a hearing within 14 days of receipt of the request. After the hearing, the legislative body or hearing officer may affirm, reduce or eliminate the penalty. The decision shall be delivered or mailed to the respondent in the same manner as the notice of violation and shall be effective five days following mailing of the decision or immediately following delivery of the decision.
- (g) Imposition of a penalty under this subchapter precludes imposition of any other administrative or civil penalty under any other provision of law for the same violation.
- (h) The civil penalty shall be paid to the enforcing agency or enforcing legislative body. If the respondent fails to pay the penalty within the time prescribed, the legislative body or commissioner may bring a collection action in small claims court or the superior court.
- (i) A respondent aggrieved by a decision made following a hearing before the legislative body or hearing officer may appeal within 30 days of receipt of the decision to the superior court which shall consider the matter de novo.
- (j) On application of a municipality or the commissioner, the superior court shall have jurisdiction to enjoin the violation of any provision of this chapter. The court may also authorize the seizure and disposition of domestic pets or wolf-hybrids when owners refuse to have the pets or wolf-hybrids inoculated or licensed, or when the court determines that there is a threat to the public welfare.—Added 1993, No. 213 (Adj. Sess.), § 7, eff. June 15, 1994.

## TITLE 23: MOTOR VEHICLES

### 23 V.S.A. § 1007. Local speed limits

(a) The legislative body of a municipality may establish, on the basis of an engineering and traffic investigation, a speed limit on all or a part of any city, town or village highway within its jurisdiction, which:

- (1) is not more than 50 miles per hour; however, after considering neighborhood character, abutting land use, bicycle and pedestrian use, and physical characteristics of the highways, the legislative body of a municipality may vote to set the maximum speed limit, without an engineering and traffic investigation, at not more than 50 miles per hour nor less than 35 miles per hour, on all or a portion of unpaved town highways within its boundaries, unless otherwise posted in accordance with the provisions of this section; or
- (2) is not less than 25 miles per hour.

If the legislative body of a municipality votes to set the speed limit on all unpaved town highways in its boundaries at not more than 50 miles per hour nor less than 35 miles per hour as provided for in subdivision (a)(1) of this section, signs shall be located at points of change from one speed limit to another.

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(b) The legislative body of a city may establish, on the basis of an engineering and traffic investigation, a speed limit on all or a part of any state highway, other than a limited access highway, within its jurisdiction, which:

(1) is not more than 50 miles per hour; or

(2) is not less than 25 miles per hour.

(c) Any altered limit is effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice are erected upon the street or highway.

(d) The special regulations have the full force and effect of law and are in the case of regulations adopted under subsections (a) and (b) of this section subject to review by the traffic committee, whose decision is final.

(e) Lack of evidence of a traffic and engineering study will not invalidate a local speed limit ordinance as adopted or amended under this section after five years following the day on which the speed limit ordinance took effect.

(f) Notwithstanding the procedure outlined in this section for enacting a local speed limit, a town or village may adopt a local speed ordinance on a state highway, other than on limited access highways, provided the ordinance duplicates the speed limit established under section 1003 of this title.

(g) Notwithstanding any requirements of section 1025 of this title, downtown development districts designated under chapter 76A of Title 24 may have posted speed limits of less than 25 miles per hour.—Added 1971, No. 258 (Adj. Sess.), § 3, eff. March 1, 1973; amended 1973, No. 239 (Adj. Sess.), § 2; 1975, No. 232 (Adj. Sess.), § 9, eff. April 7, 1976; 1989, No. 261 (Adj. Sess.), § 1, eff. June 16, 1990; 1995, No. 133 (Adj. Sess.), § 2; 1997, No. 120 (Adj. Sess.), § 7; 1999, No. 32, § 1.

### **§ 1008. Regulations in municipalities**

(a) The legislative body of a municipality may make special regulations as to the operation, use, and parking of motor vehicles, including angle parking, as to the location, design, and structure of traffic lights, as to “stop” signs and “yield right of way” signs at intersections, as to “no-passing” zones, and as to streets designated for one way traffic in the thickly settled portions of the municipality and may cause any street or highway of adequate width to be divided by appropriate markings into three or more lanes, and may, by ordinance or regulation, regulate the direction of travel and the turning of vehicles proceeding in those lanes and the passing of vehicles in one lane by overtaking vehicles in another lane, may cause markers, buttons or signs to be placed within or adjacent to intersections and thereby direct the course traveled by vehicles turning at an intersection, and when markers, buttons or signs are so placed no driver may turn a vehicle at an intersection other than as directed by the markers, buttons or signs. However, signs indicating the special regulations must be conspicuously posted in and near all areas affected. Special regulations may not be established on any state highway as defined by section 1 of Title 19. Regulations on all state highways may be made only by the traffic committee under section 1003 of this title, except that the traffic committee may authorize the legislative body of a municipality to regulate parking within a thickly settled area of a municipality, particularly described in the authorization, on state highways. The board of school directors of a union high school district may make special regulations as to the operation, use, and parking of motor vehicles within the boundaries of its school property.

(b) The legislative body of a municipality may make special regulations as to the use of lights at night on motor vehicles at rest or in motion on well lighted streets.

(c) Municipal motor vehicle regulations shall not duplicate or contradict any provision of this title.—Added 1971, No. 258 (Adj. Sess.), § 3, eff. March 1, 1973; amended 1971, No. 258 (Adj. Sess.), § 13, eff. March 1, 1973.

## **23 V.S.A. §§ 1091–1097. VIOLATIONS AND PENALTIES\*\***

### **23 V.S.A. § 1091. Negligent operation; grossly negligent operation**

(a) Negligent operation.

(1) A person who operates a motor vehicle on a public highway in a negligent manner shall be guilty of negligent operation.

(2) The standard for a conviction for negligent operation in violation of this subsection shall be ordinary negligence, examining whether the person breached a duty to exercise ordinary care.

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(3) A person who violates this subsection shall be imprisoned not more than one year or fined not more than \$1,000.00, or both. If the person has been previously convicted of a violation of this subsection, the person shall be imprisoned not more than two years or fined not more than \$3,000.00, or both.

(b) Grossly negligent operation.

(1) A person who operates a motor vehicle on a public highway in a grossly negligent manner shall be guilty of grossly negligent operation.

(2) The standard for a conviction for grossly negligent operation in violation of this subsection shall be gross negligence, examining whether the person engaged in conduct which involved a gross deviation from the care that a reasonable person would have exercised in that situation.

(3) A person who violates this subsection shall be imprisoned not more than two years or fined not more than \$5,000.00, or both. If the person has previously been convicted of a violation of this section, the person shall be imprisoned not more than four years or fined not more than \$10,000.00, or both. If serious bodily injury as defined in section 1021 of Title 13 or death of any person other than the operator results, the person shall be imprisoned for not more than 15 years or fined not more than \$15,000.00, or both.

(c) The provisions of this section do not limit or restrict the prosecution for manslaughter.

(d) A person convicted of violating subsection (b) of this section shall be assessed a surcharge of \$50.00, which shall be added to any fine or surcharge imposed by the court. The court shall collect and transfer the surcharge assessed under this subsection to be credited to the DUI enforcement fund. The collection procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of this surcharge.—Added 1971, No. 258 (Adj. Sess.), § 3, eff. March 1, 1973; amended 1981, No. 220 (Adj. Sess.); 1991, No. 55, § 16; 1995, No. 21, § 4; 1995, No. 151 (Adj. Sess.), § 2; 1997, No. 117 (Adj. Sess.), § 23.

### **23 V.S.A. § 1092. Damaging surface of road**

No person may operate or move upon or over any highway or bridge a vehicle, machine or contrivance which has any flange, ribs, clamps, or other object attached to or made a part of, its wheels which will injure, cut into or destroy the surface of the highway or bridge to any appreciable extent. This provision does not restrict the right of any person to use tires which are equipped with “studs” or “cleats,” so-called, of a type designed for general use to facilitate travel in winter.—Added 1971, No. 258 (Adj. Sess.), § 3, eff. March 1, 1973.

### **23 V.S.A. § 1093. Smoke screen device**

No person may operate, or permit to be operated, a motor vehicle which is equipped with any special device or contrivance, subject to the control of the operator, designed to give off a smoke screen, so-called, or designed to impede or hinder any law enforcement officer, in the discharge of his duties.—Added 1971, No. 258 (Adj. Sess.), § 3, eff. March 1, 1973.

### **23 V.S.A. § 1094. Operation without consent of owner; aggravated operation without consent of owner**

(a) A person commits the crime of operation without consent of the owner if the person, without the consent of the owner, knowingly takes, obtains, operates, uses or continues to operate the motor vehicle of another.

(b) A person commits the crime of aggravated operation without consent of the owner if the person, without the consent of the owner, knowingly takes, obtains, operates, uses or continues to operate the motor vehicle of another, and:

(1) the motor vehicle is not recovered within 24 hours of the time it is determined the theft occurred regardless of whether the operator is then in actual or constructive possession of the vehicle; or

(2) the motor vehicle sustains \$500.00 or more in damage during the commission of the offense; or

(3) the person does any of the following:

(A) Attempts to alter or disguise or alters or disguises the appearance of the motor vehicle.

(B) Attempts to alter or remove or alters or removes the vehicle identification number as defined in section 2001(3) of this title.

(C) Uses the motor vehicle in the commission of a felony.

(D) Causes bodily injury to another while operating or exercising control of the motor vehicle.

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(E) Abandons the motor vehicle outside of the state of Vermont.

(F) Unlawfully attaches or otherwise displays in or upon the motor vehicle registration plates other than those officially issued for the motor vehicle.

(c) A person convicted under subsection (a) of this section of operation without consent of the owner shall be imprisoned not more than two years or fined not more than \$1,000.00, or both.

(d) A person convicted under subsection (b) of this section of aggravated operation without consent of the owner shall be imprisoned not more than five years or fined not more than \$2,000.00, or both.

(e) This section shall not be construed to limit or restrict prosecutions for grand larceny.

(f) A person convicted of violating this section shall be assessed a surcharge of \$50.00, which shall be added to any fine or surcharge imposed by the court. The court shall collect and transfer the surcharge assessed under this subsection to be credited to the DUI enforcement fund. The collection procedures described in 13 V.S.A. § 5240 shall be utilized in the collection of this surcharge.—Amended 1999, No. 102 (Adj. Sess.), § 1.

### **23 V.S.A. § 1095. Operating with television set installed**

(a) Except as otherwise provided, no person may operate upon a highway in this state a motor vehicle having installed or carried in the front or driving compartment or in a manner visible to the operator, a television receiver, screen, or other means of visually receiving a television broadcast.

(b) A television receiver may be installed in a manner visible to the operator of a vehicle when the receiver is exclusively used to provide the operator with a view to the rear of the vehicle.—Added 1971, No. 258 (Adj. Sess.), § 3, eff. March 1, 1973; amended 1987, No. 112, § 10.

### **23 V.S.A. § 1096. General penalties**

(a) Any person who violates the speed restrictions of section 1083(b) of this title shall be fined not more than \$50.00 and is liable for damages for injuries thereby done to the bridge or structure, which may be recovered in a civil action brought under this section in the name and for the benefit of the state or municipal corporation liable for the repairs of the bridge or structure, with costs.

(b) A parent or guardian who knowingly permits a child under the age of sixteen years, in his custody, to violate any provision of sections 1136 through 1141, inclusive, of this title shall be fined not more than \$25.00.—Added 1971, No. 258 (Adj. Sess.), § 3, eff. March 1, 1973.

### **23 V.S.A. § 1097. Excessive speed**

No person shall operate a motor vehicle on a public highway at a speed of 60 miles per hour or more and at least 30 miles per hour in excess of a state speed zone or local speed limit. A person who violates this section shall be imprisoned upon a first conviction not more than three months or fined not more than \$300.00, or both; and upon a second conviction shall be imprisoned not more than six months or fined not more than \$500.00, or both.—Added 1989, No. 109, § 5, eff. July 1, 1990.

### **23 V.S.A. § 2206. Evidence**

(a) The court may permit to be amended any process or pleading for any omission or defect therein, or for any variance between the complaint and the evidence adduced at the trial. If the respondent is substantially prejudiced in the presentation of his case as a result of the amendment, the court shall adjourn the hearing to some future time, upon such terms as he shall think proper.

(b) Testimony of a witness as to the existence of a traffic control sign, signal, or marking, or sign establishing a speed zone, shall be prima facie evidence that any such traffic control device existed pursuant to a lawful statute, regulation or ordinance and that a defendant was lawfully required to obey the directions of such device.—Added 1971, No. 228 (Adj. Sess.), § 1.

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### **23 V.S.A. § 2502. Point assessment; schedule\*\***

(a) Any person operating a motor vehicle shall have points assessed against his or her driving record for convictions for moving violations of the indicated motor vehicle statutes in accord with the following schedule: (All references are to Title 23 of the Vermont Statutes Annotated.)

(1) Two points assessed for:

- (A) § 601. License required;
- (B) § 602. Exceptions for farm tractors and highway equipment;
- (C) § 611. Possession of license certificate;
- (D) § 612. Restrictions of license;
- (E) § 614. Rights under license;
- (F) § 615. Unlicensed operators;
- (G) § 1004. Interstate highway regulations;
- (H) § 1008. Regulations in municipalities;
- (I) § 1009. Restrictions on controlled-access roadway;
- (J) §§ 1021, 1022. Failure to obey traffic-control signals;
- (K) § 1024. Failure to obey flashing signals;
- (L) § 1026. Failure to lane control signals;
- (M) § 1031. Illegal driving to right;
- (N) § 1032. Failure to keep to the right of center when meeting oncoming traffic;
- (O) § 1037. One-way roadways and rotaries;
- (P) § 1038. Driving on roadways laned for traffic;
- (Q) § 1041. Restricted access roadways;
- (R) § 1046. Failure to yield right-of-way at intersection;
- (S) § 1047. Failure to turn to left properly;
- (T) § 1048. Failure to stop or yield at intersections;
- (U) § 1049. Failure of vehicle to yield right-of-way when entering from private road;
- (V) § 1053. Failure to exercise due care; (W) § 1059. Driving through safety zone;
- (X) § 1061. Illegal turning at intersections;
- (Y) § 1062. Turning prohibited;
- (Z) § 1063. Unsafe starting of parked vehicle;
- (AA) § 1064. Failure to use required signals; (BB) § 1065. Improper use of hand signals;
- (CC) § 1071. Illegal driving on or near railroad grade crossing;
- (DD) § 1072. Failure to stop at railroad crossings;
- (EE) § 1073. Improper crossing at a railroad grade by heavy equipment;
- (FF) § 1074. Improper emerging from driveway;
- (GG) § 1081. Basic rule and maximum limits;
- (HH) § 1082. Slow-moving vehicles;
- (II) § 1083. Special speed limitations;
- (JJ) § 1092. Damaging surface of road;
- (KK) § 1093. Smokescreen device;
- (LL) § 1095. Operating with television set installed;
- (MM) § 1113. Illegal backing;

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- (NN) § 1114. Illegal riding on motorcycles;
  - (OO) § 1115. Illegal operation of motorcycles on roadways laned for traffic;
  - (PP) § 1116. Clinging to other vehicles;
  - (QQ) § 1117. Illegal footrests and handlebars;
  - (RR) § 1118. Obstructing the driver's view;
  - (SS) § 1119. Improper opening and closing vehicle doors;
  - (TT) § 1121. Coasting prohibited;
  - (UU) § 1122. Following fire apparatus prohibited;
  - (VV) § 1123. Driving over fire hose;
  - (WW) § 1124. Position of operator;
  - (XX) § 1127. Unsafe control in presence of horses;
  - (YY) § 1131. Failure to give warning signal;
  - (ZZ) § 1132. Illegal driving on sidewalk;
  - (AAA) § 1243. Lighting requirements;
  - (BBB) § 1256. Motorcycle headgear;
  - (CCC) § 1257. Face protection;
  - (DDD) § 800. Operating without financial responsibility;
  - (EEE) All other moving violations which have no specified points;
- (2) Three points assessed for:
- (A) § 1033. Illegal passing on the left;
  - (B) § 1034. Illegal passing on the right;
  - (C) § 1035. Limitations on passing;
  - (D) § 1036. No passing zone;
  - (E) § 1039. Following too closely;
  - (F) § 1040. Improper driving on divided highway;
- (3) Four points assessed for:
- (A) § 1012. Failure to obey enforcement officer;
  - (B) § 1013. Authority of enforcement officers;
  - (C) § 1051. Failure to yield to pedestrian;
  - (D) § 1057. Failure to yield to blind persons;
- (4) Five points assessed for:
- (A) § 1050. Failure to yield to emergency vehicles;
  - (B) § 1075. Illegal passing of school bus;
  - (C) § 676. Operating after suspension, revocation or refusal - civil violation;
- (5) Ten points assessed for:
- (A) § 674. Operating after suspension or revocation of license;
  - (B) § 1091. Negligent operation;
  - (C) § 1094. Operation without owner's consent and aggravated operation without owner's consent;
  - (D) § 1128. Failure to stop when involved in an accident;
  - (E) § 1133. Attempting to elude a police officer;
- (6) Two points assessed for § 1003 and § 1007. State speed zones and local speed limits, less than 10 miles per hour over and in excess of speed limit;

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(7) Three points assessed for § 1003 and § 1007. State speed zones and local speed limits, more than 10 miles per hour over and in excess of speed limit;

(8) Five points assessed for § 1003 and § 1007. State speed zones and local speed limits, more than 20 miles per hour over and in excess of speed limit;

(9) Eight points assessed for § 1003 and § 1007. State speed zones and local speed limits, more than 30 miles per hour over and in excess of the speed limit.

(b) Two additional points shall be assessed for any violation which has resulted in an accident which was the fault of the violator, provided that before these additional points are added a determination on fault must have been made. — Added 1977, No. 238 (Adj. Sess.), § 1, eff. July 1, 1979; amended 1985, No. 77, § 2, eff. Jan. 1, 1986; No. 85 § 9; 1989, No. 68, § 9, eff. Dec. 1, 1989; No. 109, § 4, eff. July 1, 1990; 1991, No. 55, §§ 14, 15; 1999, No. 102 (Adj. Sess.), § 3.

\*\* For updated information on fines and points, go to: [www.state.vt.us/courts/vtb/trfcmp.htm#21](http://www.state.vt.us/courts/vtb/trfcmp.htm#21).

## TITLE 24: MUNICIPAL AND COUNTY GOVERNMENT

### 24 V.S.A. § 1936a. Constables; powers and qualifications

(a) A town may vote at a special or annual town meeting:

(1) to prohibit constables from exercising any law enforcement authority; or

(2) to prohibit constables from exercising any law enforcement authority without having successfully completed a course of training under chapter 151 of Title 20.

(b) Notwithstanding the provisions of subsection (a) of this section, constables may perform the following duties:

(1) the service of civil or criminal process, under 12 V.S.A. § 691;

(2) destruction of animals, in accordance with the provisions of 20 V.S.A., chapter 193;

(3) the killing of injured deer, under 10 V.S.A. § 4749;

(4) provision of assistance to the health officer in the discharge of the health officer's duties, under 18 V.S.A. § 617;

(5) service as a district court officer, under 24 V.S.A. § 296;

(6) removal of disorderly people from town meeting, under 17 V.S.A. § 2659; and

(7) collection of taxes, when no tax collector is elected, as provided under 24 V.S.A. § 1529.

(c) A constable who is not prohibited from exercising law enforcement authority under subsection (a) of this section may transport a person arrested by the constable for a violation of 23 V.S.A. § 1201 (DUI) to a police department outside the town for the purpose of DUI processing and may complete the processing if he or she has been certified by the Vermont criminal justice training council to do so.

(d) A municipal legislative body may vote to allow a constable elected or appointed in another municipality to exercise law enforcement authority in its municipality, provided that:

(1) the constable is not prohibited from exercising law enforcement authority under subsection (a) of this section;

(2) the constable has completed the training requirements for a full-time or part-time law enforcement officer under section 2358 of Title 20; and

(3) the exercise of law enforcement authority is conducted in accordance with policies and procedures adopted by the legislative body establishing the circumstances under which the authority may be exercised.

## 24 VERMONT STATUTES ANNOTATED, CHAPTER 59

### 24 § 1971. Authority to adopt

(a) A municipality may adopt, amend, repeal and enforce ordinances or rules for any purposes authorized by law.

(b) 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.

## **APPENDIX F**

### **24 § 1972. Procedure**

(a) 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 full text of the ordinance or rule, or a concise summary of it including a statement of purpose, principal provisions, and table of contents or list of section headings, shall be published 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. Along with the concise summary shall be published a reference to a place within the municipality where the full text may be examined. When the text or concise summary of an ordinance is published, 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, and shall also contain the name, address and telephone number of a person with knowledge of the ordinance or rule who is available to answer questions about it.

Unless a petition is filed in accordance with section 1973 of this title, the ordinance or rule shall become effective sixty days after the date of its adoption, or at such time following the expiration of sixty 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 section 1973(e) of this title.

(b) All ordinances and rules adopted by a municipality shall be recorded in the records of the municipality.

(c) The procedure herein provided shall apply to the adoption of any ordinance or rule by a municipality unless another procedure is provided by charter, special law or particular statute.

### **24 § 1973. Permissive referendum**

(a) An ordinance or rule adopted by a municipality may be disapproved by a vote of a majority of the qualified voters of the municipality voting on the question at an annual or special meeting duly warned for the purpose, pursuant to a petition signed and submitted in accordance with subsection (b) of this section.

(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 forty-four 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 sixty 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 sixty-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.

### **24 § 1974. Enforcement of criminal ordinances**

(a) The violation of a criminal ordinance or rule adopted by a municipality under this chapter shall be a misdemeanor. The criminal ordinance or rule may provide for a fine or imprisonment, but no fine may exceed \$500.00, nor may any term of imprisonment exceed one year. Each day the violation continues shall constitute a separate offense.

(b) The presiding judge of the superior court, on application of the legislative body of a municipality, shall have jurisdiction to enjoin the violation of an ordinance or rule but the election of a municipality to proceed under this subsection shall not prevent prosecutions under subsection (a) of this section.

(c) Prosecutions of criminal ordinances shall be brought before the district court pursuant to section 441 of Title 4.

(d) Prosecutions of criminal ordinances may be brought on behalf of the municipality by the municipal attorney, grand juror or other person designated by the legislative body of the municipality.



## **APPENDIX F**

### **24 § 1974a. Enforcement of civil ordinance violations**

- (a) A civil penalty of not more than \$500.00 may be imposed for a violation of a civil ordinance. Each day the violation continues shall constitute a separate violation.
- (b) All civil ordinance violations, except municipal parking violations, and all continuing civil ordinance violations, where the penalty is \$500.00 or less, shall be brought before the judicial bureau pursuant to Title 4 and this chapter. If the penalty for all continuing civil ordinance violations is greater than \$500.00, or injunctive relief, other than as provided in subsection (c) of this section, is sought, the action shall be brought in superior court.
- (c) The judicial bureau, on application of a municipality, may order that a civil ordinance violation cease.
- (d) Civil enforcement of municipal zoning violations may be brought as a civil ordinance violation pursuant to this section or in an enforcement action pursuant to the requirements of chapter 117 of this title.

### **24 § 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.

### **24 § 1976. Amendments and 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.

### **24 V.S.A. § 1977. Complaint for municipal civil ordinance violations**

- (a) The complaint in a municipal civil case shall be signed by the issuing municipal official. The original copy shall be filed with the judicial bureau, a copy shall be retained by the issuing municipal official and two copies shall be given to the defendant.
- (b) The municipal official may void or amend the municipal complaint issued by that official by so marking the complaint and sending it to the judicial bureau.
- (c) The court administrator shall approve an appropriate summons and complaint form, pursuant to subsection 1105(a) of Title 4, to implement the assessment of the full and waiver penalty provisions of this section

### **24 V.S.A. § 1979. Procedure**

- (a) Municipal ordinance violations shall be heard by the bureau and the procedure shall be as provided in chapter 29 of Title 4.
- (b) At the hearing, the municipal attorney, grand juror or designee of the legislative body of the municipality may dismiss or amend the complaint, subject to the approval of the hearing officer.
- (c) Upon entry of default judgment pursuant to 4 V.S.A. § 1105(e), the hearing officer shall assess the full penalty provided for in the ordinance that was found to have been violated.
- (d) Upon entry of judgment against the defendant after a contested hearing, the hearing officer shall assess a civil penalty in an amount not less than the waiver penalty and not more than the full penalty provided for in the ordinance that was found to have been violated.

### **24 V.S.A. § 1981. Enforcement of order from judicial bureau**

- (a) Upon entry of a judgment after hearing or entry of default by the hearing officer, subject to any appeal pursuant to 4 V.S.A. § 1107, the person found in violation shall have up to 30 days to pay the penalty to the judicial bureau. All the civil remedies for collection of judgments shall be available to enforce the final judgment of the judicial bureau.
- (b) In addition to any other civil remedies available by law, a final judgment of the judicial bureau that has not been satisfied within 30 days shall, upon due recordation in the land records of the town in which any real or personal property of the defendant is located, constitute a lien upon that real or personal property, except for motor vehicles

## **APPENDIX F**

as defined by 23 V.S.A. § 4(21), and may be enforced within the time and in the manner provided for the collection of taxes pursuant to subchapter 8, chapter 133 of Title 32.

(c) The supreme court shall establish rules which provide for an expedited process in small claims court for the collection of judgments to enforce the orders of the judicial bureau.

(d) Upon motion of the municipal attorney, grand juror or other person designated by the legislative body of the municipality and proof by affidavit that the person found in violation has not paid the penalty, the bureau shall send to the person found in violation a notice that the penalty must be paid within 20 days of receipt of notice. The notice shall include a warning that failure to pay the penalty within 20 days of the notice will result in a proceeding for contempt before the district court.

(e) If the penalty is not paid within the 20 days, the bureau shall send a notice to the district court in the county in which the violation occurred. The clerk of the district court shall forthwith provide notice to the person of a hearing for civil contempt proceedings pursuant to 12 V.S.A. § 122 for the failure to pay the penalty imposed by the bureau.

### **24 V.S.A. § 1982. Reports**

The court administrator shall prepare audits, records and reports relating to the enforcement of municipal ordinance complaints in the judicial bureau.

### **24 V.S.A. § 1983. Identification to law enforcement officers required**

(a) A law enforcement officer is authorized to detain a person if:

- (1) the officer has reasonable grounds to believe the person has violated a municipal ordinance; and
- (2) the person refuses to identify himself or herself satisfactorily to the officer when requested by the officer.

(b) The person may be detained only until the person identifies himself or herself satisfactorily to the officer. If the officer is unable to obtain the identification information, the person shall forthwith be brought before a district court judge for that purpose. A person who refuses to identify himself or herself to the court on request shall immediately and without service of an order on the person be subject to civil contempt proceedings pursuant to 12 V.S.A. § 122.

### **24 V.S.A. § 2201. Throwing, depositing, and dumping refuse; penalty; summons and complaint**

(a) Prohibition. Every person shall be responsible for proper disposal of his or her own solid waste. A person shall not throw, dump, deposit, cause, or permit to be thrown, dumped, or deposited, bottles, glass, crockery, cans, scrap metal, plastic, solid waste as defined in 10 V.S.A. § 6602, junk, paper, garbage, old automobiles, or parts thereof, refuse of whatever nature, or any noxious thing on lands of others or within 300 feet of the lands of others, public or private, or into the waters of this state, or on the shores or banks thereof or on or within view of a public highway. It shall be prima facie evidence that a person who is identifiable from an examination of the refuse, that is illegally dumped, is the person who violated a provision of this section.

(b) Prosecution of violations. A person who violates a provision of this section commits a civil violation and shall be subject to a civil penalty of not more than \$500.00. This violation shall be enforceable in the judicial bureau pursuant to the provisions of chapter 29 of Title 4 in an action that may be brought by a municipal attorney, solid waste management district attorney, grand juror, or designee of the legislative body of the municipality, or by any duly authorized law enforcement officer. If the throwing, placing, or depositing was done from a motor vehicle, except a motor bus, it shall be prima facie evidence that the throwing, placing, or depositing was done by the driver of such motor vehicle. Nothing in this section shall be construed as affecting the operation of an automobile graveyard or junkyard as defined in section 2241 of this title, nor shall anything in this section be construed as prohibiting the installation and use of appropriate receptacles for solid waste provided by the state or towns. Sanitary land fills, recycling centers, and incinerators maintained pursuant to section 2202 of this title; and solid waste from mining, quarrying, farming operations, or logging and sawmill operations are exempt from the restrictions set forth above concerning the distance of 300 feet and visibility from a public highway.

(c) Roadside cleanup. A person found in violation of this section may be assigned to spend up to 80 hours collecting trash or litter from a specified segment of roadside or from a specified area of public property.

(d) The commissioner of motor vehicles shall suspend the motor vehicle operator's license or operating privilege of a person found in violation of this section for a period of ten days if the person fails to pay the penalty set forth in subsection (b) of this section. This provision shall not apply if the only evidence of violation is the presumption set

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forth in subsection (b) of this section. The bureau shall immediately notify the commissioner of the department of motor vehicles of the entry of judgment.

(e) The commissioner of fish and wildlife shall revoke the privilege of a person found in violation of this section from holding a hunting or fishing license, or both, for a period of one year from the date of the conviction, if the person fails to pay the penalty set forth in subsection (b) of this section. The bureau shall immediately notify the commissioner of fish and wildlife of the entry of judgment.

(f) [Deleted.]

(g) Amendment of complaint. A person authorized to enforce this section may amend or dismiss a complaint issued by that person by marking the complaint and returning it to the judicial bureau. At the hearing, a person authorized to enforce this section may amend or dismiss a complaint issued by that person, subject to the approval of the hearing judge.

(h) [Deleted.]—Amended 1999, No. 63, § 3; 1999, No. 160 (Adj. Sess.), § 29.

### **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:

- (1) To set off portions of public highways of the municipality for sidewalks and bicycle paths and to regulate their use.
- (2) To provide for the removal of snow and ice from sidewalks by the owner, occupant or person having charge of abutting property.
- (3) To provide for the location, protection, maintenance and removal of trees, plants and shrubs, and buildings or other structures on or above public highways, sidewalks, or other property of the municipality.
- (4) To regulate the operation and use of vehicles of every kind including the power: to erect traffic signs and signals; to regulate the speed of vehicles subject to sections 1141 through 1147 of Title 23; to regulate or exclude the parking of all vehicles; and to provide for waiver of the right of appearance and arraignment in court by persons charged with parking violations by payment of specified fines within a stated period of time.
- (5) To establish rules for pedestrian traffic on public highways and to establish crosswalks.
- (6) To regulate the location, installation, maintenance, repair and removal of utility poles, wires and conduits, water pipes or mains, gas mains and sewers, upon, under or above public highways or public property of the municipality.
- (7) To regulate or prohibit the erection, size, structure, contents and location of signs, posters or displays on or above any public highway, sidewalk, lane or alleyway of the municipality and to regulate the use, size, structure, contents and location of signs on private buildings or structures.
- (8) To regulate or prohibit the use or discharge, but not possession of, firearms within the municipality or specified portions thereof.
- (9) To license or regulate itinerant vendors, peddlers, door-to-door salesmen, and those selling goods, wares, merchandise or services who engage in a transient or temporary business, or who sell from an automobile, truck, wagon or other conveyance, excepting persons selling fruits, vegetables or other farm produce.
- (10) To regulate the keeping of dogs, and to provide for their leashing, muzzling or restraint.
- (11) To regulate, license, tax or prohibit circuses, carnivals and menageries, and all plays, concerts, entertainments or exhibitions of any kind for which money is received.
- (12) To regulate or prohibit the storage or dumping of solid waste, as defined in 10 V.S.A. § 6602. These regulations may require the separation of specified components of the waste stream.
- (13) To compel the cleaning or repair of any premises which in the judgment of the legislative body is dangerous to the health or safety of the public.
- (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.
- (15) To provide for penalties for violation of any ordinance or rule adopted under the authority of this section.
- (16) To name and rename streets and to number and renumber lots pursuant to section 4421 of this title.

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- (17) To regulate or prohibit possession of open or unsealed containers of alcoholic beverages in public places.
- (18) To regulate or prohibit consumption of alcoholic beverages in public places.
- (19) To regulate the construction, alteration, development, and decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements where the city, town or village has not adopted zoning or where those activities are not regulated pursuant to a duly adopted zoning bylaw. Regulations regarding the decommissioning or dismantling of telecommunications facilities and ancillary structures may include requirements that bond be posted, or other security acceptable to the legislative body, in order to finance facility decommissioning or dismantling activities. These regulations are not intended to prohibit seamless coverage of wireless telecommunications services.
- (20) To establish a conflict of interest policy to apply to all elected and appointed officials of the town, city, or incorporated village.—Amended 1993, No. 211 (Adj. Sess.), § 15, eff. June 17, 1994; 1997, No. 94 (Adj. Sess.), § 2, eff. April 15, 1998; 1999, No. 82 (Adj. Sess.), § 1.

### **24 V.S.A. § 2297a. Enforcement of solid waste ordinance by town, city or incorporated village**

(a) Solid waste order. A legislative body may issue and enforce a solid waste order in accordance with this section. A solid waste order may include a directive that the respondent take actions necessary to achieve compliance with the ordinance, to abate hazards created as a result of noncompliance, or to restore the environment to the condition existing before the violation and may include a civil penalty of not more than \$500.00 for each violation and in the case of a continuing violation, not more than \$100.00 for each succeeding day. In determining the amount of civil penalty to be ordered, the legislative body shall consider the following:

- (1) the degree of actual or potential impact on public health, safety, welfare and the environment resulting from the violation;
- (2) whether the respondent has cured the violation;
- (3) the presence of mitigating circumstances;
- (4) whether the respondent knew or had reason to know the violation existed;
- (5) the respondent's record of compliance;
- (6) the economic benefit gained from the violation;
- (7) the deterrent effect of the penalty;
- (8) the costs of enforcement;
- (9) the length of time the violation has existed.

(b) Notice. When the legislative body has reasonable grounds to believe that a person has violated a solid waste ordinance, the legislative body may issue notice of the alleged violation, which shall be delivered to the respondent in person or mailed to the respondent by first class mail or by certified mail, return receipt requested. If mailed by first class mail, the notice is deemed received three days after the date of mailing. A copy of the notice of violation shall be mailed to the department of environmental conservation for information purposes only. The notice of violation shall include

- (1) a brief description of the alleged violation and identification of the ordinance alleged to have been violated;
- (2) a brief description of the potential enforcement actions which may be taken by the legislative body and the legislative body's probable course of action;
- (3) a statement that the respondent has a right to a preliminary hearing before the legislative body and a description of the procedures for requesting a preliminary hearing.

(c) Preliminary hearing. A person who receives a notice of violation shall be offered an opportunity for a preliminary hearing before the legislative body for the purpose of determining whether a violation exists and reviewing the legislative body's probable course of action. The request for hearing shall be made in writing to the clerk of the town, city or incorporated village no later than ten days after the date the notice of violation is received. The legislative body shall hold a hearing within 14 days of receipt of the request for a hearing.

(d) Proposed order. After a preliminary hearing, the legislative body may issue a proposed order. If no hearing is requested within ten days after the date of receipt of the notice of violation, the legislative body may issue a proposed order at once. A proposed order shall be delivered to the respondent in person or mailed to the respondent

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by first class mail or by certified mail, return receipt requested. If mailed by first class mail, the order is deemed received three days after the date of mailing.

(e) Contents of proposed order. A proposed order shall include

(1) a statement that the respondent has the right to request a hearing before the legislative body on the proposed order and the procedures for requesting the hearing;

(2) a statement that the respondent has the right to request a hearing before the environmental court after the order has become final and a description of the procedures for requesting a hearing before the environmental court;

(3) a statement that filing a request for hearing before the environmental court will stop penalties from accruing in the case of a continuing violation;

(4) if applicable, a directive that the respondent take actions necessary to achieve compliance with the ordinance, to abate hazards created as a result of noncompliance, or to restore the environment to the condition existing before the violation;

(5) if applicable, a civil penalty of not more than \$500.00 for each violation and in the case of a continuing violation, not more than \$100.00 for each succeeding day.

(f) Hearing on proposed order. A person who receives a proposed order shall be offered an opportunity for a hearing before the legislative body, provided that the request for hearing is made in writing to the clerk of the town, city or incorporated village no later than 15 days after the date of receipt of the order. If the respondent does not request a hearing, the order shall be deemed a final order, and shall be effective on the date of receipt or a later date stated in the order. If the respondent does request a hearing subsequent to receipt of the order, the legislative body shall hold a hearing within 14 days of receipt of the request. After the hearing, the legislative body may withdraw or amend the order and may issue a final order, which shall be delivered or mailed to the respondent in the same manner as proposed orders and which shall be effective on the date of receipt or a later date stated in the order.

(g) Continuing violations. Each day that a violation continues from the effective date of a final order shall constitute a separate violation. However, the filing of a request for hearing with the environmental court shall stop penalties from accruing in the case of a continuing violation until the environmental court has issued its order.

(h) Effect of imposition of penalty. Imposition of a penalty under this subchapter precludes imposition by the town, city or incorporated village of any other administrative or civil penalty under any other provision of law for the same violation.

(i) Payment to town, city or incorporated village. All penalties collected under this subchapter shall be paid to the town, city or incorporated village whose ordinance is the subject of the violation.

(j) Enforcement. The legislative body may seek enforcement of a final order in the superior court or before the environmental court. If a penalty is imposed and the respondent fails to pay the penalty within the time prescribed, the legislative body may bring a collection action in the superior court.—Amended 1993, No. 232 (Adj. Sess.), § 38, eff. March 15, 1995.

### **24 V.S.A. § 2297b. Hearing by environmental court**

(a) A respondent may request a hearing on a final order under this subchapter before the environmental court established under chapter 27 of Title 4, which shall consider the matter de novo. Notice of a request for hearing shall be filed with the environmental court and the municipal clerk within ten days of receipt of the final order.

(b) Notice of a request for hearing before the environmental court shall stay the order and payment of the penalty, if imposed, pending the hearing.

(c) If the environmental court determines that a violation has not occurred, it shall reverse the order.

(d) The environmental court may affirm a directive in an order or, if it finds that the violation exists but the remedies contained in the order are not likely to achieve the intended result, it may modify or vacate and remand the directive.

(e) In determining whether to affirm, modify or reverse an order for a civil penalty, the environmental court shall consider the factors set forth in subsection 2297a(a) of this title.

(f) If the respondent does not request a hearing on a final order within ten days of receipt of the order, the final order shall stand.—Amended 1993, No. 232 (Adj. Sess.), § 38, eff. March 15, 1995.

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### **§ 4444. Enforcement; penalties**

(a) Any person who violates any bylaw after it has been adopted under this chapter or who violates a comparable ordinance or regulation adopted under prior enabling laws shall be fined not more than \$100.00 for each offense. No action may be brought under this section unless the alleged offender has had at least seven days' warning notice by certified mail. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation of the bylaw or ordinance after the seven-day notice period and within the next succeeding 12 months. The seven-day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. In default of payment of the fine, such person, the members of any partnership, or the principal officers of such corporation shall each pay double the amount of such fine. Each day that a violation is continued shall constitute a separate offense. All fines collected for the violation of bylaws shall be paid over to the municipality whose bylaw has been violated.

(b) Any person who, being the owner or agent of the owner of any lot, tract or parcel of land, lays out, constructs, opens or dedicates any street, sanitary sewer, storm sewer, water main, or other improvements for public use, travel, or other purposes or for the common use of occupants of buildings abutting thereon, or sells, transfers, or agrees or enters into an agreement to sell any land in a subdivision or land development whether by reference to or by other use of a plat of such subdivision or land development or otherwise, or erects any structure thereon, unless a final plat has been prepared in full compliance with this chapter and the bylaws adopted under this chapter and has been recorded as provided herein, shall be fined not more than \$100.00 and each lot or parcel so transferred or sold or agreed or included in a contract to be sold shall be deemed a separate violation. All fines collected for such violations shall be paid over to the municipality whose regulation has been violated. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the seller or transferor from such penalties or from the remedies herein provided.—Amended 1999, No. 46, § 6, eff. May 26, 1999.

### **§ 4474. Clerk's certificate**

A certificate of the clerk of a municipality showing the publication, posting, consideration and adoption of a plan, bylaw, capital budget or program or amendment thereof shall be presumptive evidence of the facts as they relate to the lawful adoption of said plan, bylaw, capital budget or program or amendment thereof, so stated in any action or proceeding in court or before any board, commission or other tribunal.—Added 1973, No. 261 (Adj. Sess.), § 9; amended 1975, No. 164 (Adj. Sess.), § 10.

### **§ 4494. Construction; limitation**

(a) In reviewing the procedures used in the adoption, amendment or repeal of any plan or bylaw, no court shall invalidate the plan or bylaw or its amendment or repeal because of a failure to adhere to strict and literal requirements of this chapter concerning minor or nonessential particulars. The court shall uphold the plan, bylaw or action if there has been substantial compliance with the procedural requirements of this chapter.

(b) No person shall challenge for purported procedural defects the validity of any plan or bylaw as adopted, amended or repealed under this chapter after two years following the day on which it would have taken effect if no defect had occurred.—Added 1981, No. 132 (Adj. Sess.), § 17, eff. Oct. 1, 1982.

## **TITLE 32: TAXATION AND FINANCE**

### **§ 1431. Fees in supreme, superior, district and family courts**

(a) Prior to the entry of any cause in the supreme court there shall be paid to the clerk of the court for the benefit of the state a fee of \$150.00 in lieu of all other fees.

(b)(1) Prior to the entry of any cause in the superior court or environmental court there shall be paid to the clerk of the court for the benefit of the state a fee of \$150.00 in lieu of all other fees.

(2) Prior to the entry of any divorce or annulment proceeding in the family court there shall be paid to the clerk of the court for the benefit of the state a fee of \$125.00 in lieu of all other fees; however, if the divorce or annulment complaint is filed with a stipulation for a final order acceptable to the court, the fee shall be \$75.00.

(3) Prior to the entry of any parentage or desertion and support proceeding brought under chapter 5 of Title 15 in the family court there shall be paid to the clerk of the court for the benefit of the state a fee of \$75.00 in lieu of all other

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fees; however, if the parentage or desertion and support complaint is filed with a stipulation for a final order acceptable to the court, the fee shall be \$25.00.

(4) Prior to the entry of any motion or petition to vacate, modify or enforce an order for parental rights and responsibilities, parent-child contact or maintenance in the family court there shall be paid to the clerk of the court for the benefit of the state a fee of \$50.00 in lieu of all other fees; however, if the motion or petition is filed with a stipulation for an order acceptable to the court, the fee shall be \$25.00. All motions or petitions filed by one party at one time shall be assessed one fee.

(5) Prior to the entry of any motion or petition to vacate or modify an order for child support in the family court there shall be paid to the clerk of the court for the benefit of the state a fee of \$25.00 in lieu of all other fees; however, if the motion or petition is filed with a stipulation for an order acceptable to the court, there shall be no fee. A motion or petition to enforce an order for child support shall require no fee. All motions or petitions filed by one party at one time shall be assessed one fee; if a simultaneous motion is filed by a party under subdivision (4) of this subsection, the subdivision (4) fee shall be the only fee assessed.

(c) Prior to the entry of a small claims action there shall be paid to the clerk for the benefit of the state in lieu of all other fees a fee of \$50.00 if the claim is for more than \$500.00 and \$25.00 if the claim is for \$500.00 or less. The filing fee for civil suspension proceedings filed pursuant to 23 V.S.A. § 1205 shall be \$50.00, which shall be taxed in the bill of costs in accordance with sections 1433 and 1471 of this title.

(d) Prior to the entry of any subsequent pleading which sets forth a claim for relief in the supreme court or the superior, environmental, or district court, there shall be paid to the clerk of the court for the benefit of the state a fee of \$75.00 for every appeal, cross-claim or third-party claim and a fee of \$50.00 for every counterclaim in the superior or environmental court in lieu of all other fees. The fee for every counterclaim in small claims' proceedings shall be \$25.00 if the counterclaim is for more than \$500.00 and \$15.00 if the counterclaim is for \$500.00 or less.

(e) Prior to the filing of any post-judgment motion in the superior, environmental, or district court there shall be paid to the clerk of the court for the benefit of the state a fee of \$35.00 except for small claims actions for which the fee shall be \$15.00 in lieu of all other fees.

(f) The filing fee for all actions filed in the judicial bureau shall be \$10.00; the state or municipality shall not be required to pay the fee; however, if the respondent denies the allegations on the ticket, the fee shall be taxed in the bill of costs in accordance with sections 1433 and 1471 of this title.

(g) Pursuant to Vermont Rules of Civil Procedure 3.1, Vermont Rules of Appellate Procedure 24(a), or District Court Civil Rules 3.1, part or all of the filing fee may be waived if the court finds that the applicant is unable to pay it. The clerk of the court or the clerk's designee shall establish the in forma pauperis fee in accordance with procedures and guidelines established by administrative order of the supreme court.—Amended 1995, No. 77 (Adj. Sess.), § 1, eff. March 21, 1996; 1997, No. 121 (Adj. Sess.), § 22.

## APPENDIX G

These statutes are in effect as of May 2001. Please check current statutes for updates.

### COURT RULES

#### VERMONT RULES OF CIVIL PROCEDURE

##### **Rule 80.6. Traffic and Municipal Ordinance Bureau Procedures.**

(a) **Applicability of Rule.** This rule applies to the summary civil proceedings held pursuant to 23 V.S.A. §§ 2301-2308 and 24 V.S.A. §§ 1971-1981 before the traffic and municipal ordinance bureau or on appeal to the district court.

##### **(b) Information Obtained from Defendant.**

(1) An officer acting pursuant to 23 V.S.A. chapter 24 shall make a reasonable inquiry as to the defendant's mailing address. This may consist of asking the defendant whether the address shown on the defendant's license is a correct mailing address of the defendant and if it is not, informing the defendant that a correct address is needed. The address obtained shall be the address to which all further notices will be mailed, unless the defendant subsequently informs the traffic and municipal ordinance bureau of another address.

(2) An officer acting pursuant to 24 V.S.A. §§ 1971-1981 shall make reasonable inquiry as to, and record on the complaint, the legal and mailing address of the defendant. The bureau will mail all notices to the mailing address, unless the defendant subsequently informs the bureau of another address.

(3) The officer shall also inquire whether the defendant is currently on active duty in the armed forces.

(c) **Summons; Complaint; Answer.** An action is commenced by filing a complaint against a single defendant with the traffic and municipal ordinance bureau.

(1) The summons and complaint shall be in a form approved by the Supreme Court and distributed by the Court Administrator. They shall be signed by an officer and shall be delivered to the defendant in person or by first class mail to the address obtained after a reasonable inquiry pursuant to subdivision (b).

(2) If the defendant is a corporation, the complaint shall be delivered to its registered agent or a corporate officer.

(3) A defendant shall serve an answer within twenty days after service of the summons and complaint upon the defendant.

(4) The Court Administrator shall provide a form for municipalities to indicate those persons authorized to issue municipal complaints under 24 V.S.A. § 1979(c).

##### **(d) Motions; Discovery; Continuances; Subpoenas; Hearings.**

(1) No pretrial motions or discovery shall be allowed without permission of the bureau.

(2) The traffic and municipal ordinance bureau shall notify the officer and the defendant, and the state's attorney if the state's attorney has entered an appearance, of the date and location of the hearing. The hearing notice shall be mailed to the police department for a traffic complaint, and to the officer for a municipal complaint. Continuances may be granted for good cause shown prior to or during the hearing.

(3) Subpoenas shall be issued pursuant to V.R.C.P. 45(a), (b), (c), (e) and (f).

(4) D.C.C.R. 80.3(i) shall govern trial procedure except that the proceedings shall be recorded electronically or stenographically.

(5) If the complaint alleges a violation of a municipal ordinance, the officer shall bring to the hearing a certified copy of the complete ordinance in effect at the time of the alleged violation. The officer also shall bring two photocopies of the section of the ordinance the defendant is alleged to have violated. The officer shall give one photocopy to the defendant, and the other photocopy may be offered as an exhibit.

##### **(e) Default; Execution on Default Judgment.**

(1) If a person fails to appear or answer a traffic complaint within 20 days after service, the traffic and municipal ordinance bureau shall enter a default judgment against the person. No motion for default judgment or affidavit of amount due is required, unless the complaint is a municipal complaint with a penalty of more than \$175.

(2) In those cases which are not subject to dismissal under subdivision (f) of this rule and in which a defendant has answered the complaint but has failed to appear at a duly noticed hearing on the merits, the hearing officer may either proceed with the hearing on the merits or enter a default judgment. No additional notice to defendant shall be



## APPENDIX G

These statutes are in effect as of May 2001. Please check current statutes for updates.

required prior to entering the default judgment. If judgment is entered against the defendant based on evidence submitted at trial under this paragraph, that judgment shall be deemed a default judgment solely for purposes of paragraph (4) of this subdivision.

(3) Notwithstanding the foregoing, no judgment by default shall be entered until the filing of an affidavit made by the officer, on the affiant's own knowledge, setting forth facts showing that the defendant is not a person in military service as defined in Article I of the "Soldiers' and Sailors' Civil Relief Act" of 1940, as amended, except upon order of the bureau in accordance with that Act.

(4) Execution shall not issue on a default judgment until it has been served on the defendant by first class mail.

(5) The hearing officer may set aside a default judgment only pursuant to D.C.C.R. 60.

### **(f) Dismissal.**

(1) At any time prior to the date of the hearing, the officer may dismiss a traffic complaint with the approval of his or her supervisor, or the state's attorney may dismiss a traffic complaint. At any time prior to the date of the hearing, an officer may dismiss a municipal complaint.

(2) At the hearing, the officer may dismiss a complaint with the approval of the hearing officer, or the state's attorney may dismiss a traffic complaint.

(3) The hearing officer shall dismiss the complaint if the officer fails to appear at the hearing, unless the hearing officer has granted a continuance pursuant to subdivision (d)(2).

(4) All dismissals shall be with prejudice.

### **(g) Admissions.**

(1) A person who mails an unsigned or incomplete answer to the traffic and municipal ordinance bureau accompanied by payment of all or part of the penalty shall be deemed to have entered an admission.

(2) Failure to answer, the entry of an admission by answer and other form of admission of the merits of the complaint shall not be admissible in any civil or criminal proceeding other than a proceeding relating to the validity or fact of a suspension.

### **(h) Entry of Judgment.**

(1) The hearing officer's findings and judgment shall not be entered until ten days after they have been delivered or mailed to the parties by first class mail.

(2) During the time for filing a notice of appeal and pending the appeal if a notice is filed, payment of any penalty imposed shall be stayed.

### **(i) Appeal.**

(1) Any party entitled thereto by law may appeal to a district court from a decision of the traffic and municipal ordinance bureau by filing with the traffic and municipal ordinance bureau a notice of appeal in the manner and within the time provided in Rules 3 and 4 of the Vermont Rules of Appellate Procedure, together with the entry fee required by 32 V.S.A. § 1431(d). Upon the filing thereof, the traffic and municipal ordinance bureau shall notify each party and shall mail a copy of the notice and a copy of the docket entries with the entry fee, if any, to the clerk of the district court in the county in which the complaint was issued.

#### **(2) Appeal on the Record.**

(A) Unless otherwise requested in the notice of appeal, the appeal shall be on the record. The record on appeal shall consist of the papers and exhibits filed in the traffic and municipal ordinance bureau, a certified copy of the docket entries, and the electronic recording of the hearing or the transcript thereof. No pleadings shall be required in the district court. Within 30 days of the filing of the notice of appeal, the traffic and municipal ordinance bureau shall transmit the papers and exhibits filed to the clerk of the district court in the manner provided in Rule 11(b) of the Vermont Rules of Appellate Procedure. The appeal shall be docketed and the record deemed complete as provided in Rule 12 of the Vermont Rules of Appellate Procedure. If the proceedings in the traffic and municipal ordinance bureau were not electronically recorded, the appellant shall procure a transcript of the proceedings and cause the record to be completed in the manner provided by Vermont Rules of Appellate Procedure 10 and 11.

(B) After the record has been deemed complete, the district court shall schedule oral argument, unless waived by all parties, and notify the parties. The appeal shall be heard and decided based on the record made in the traffic and municipal ordinance bureau.

## APPENDIX G

These statutes are in effect as of May 2001. Please check current statutes for updates.

(3) *De Novo Appeal*. If the defendant requests a de novo review and a jury trial in the notice of appeal, the case shall be tried to a jury; otherwise, the case shall be tried to the district court. To the extent applicable, subdivisions (d), (e), (f) and (g) of this rule shall provide the procedure governing de novo appeals. However, in the discretion of the district court, discovery and pretrial motions may be allowed.

(4) V.R.A.P. 6(b) governs appeals from the district court.

(5) Fifteen days after the entry of judgment in the district court, if no request for permission to appeal to the supreme court has been filed, or five days after permission to appeal has been denied, the clerk shall certify the decision of the district court to the traffic and municipal ordinance bureau, returning therewith any original document transmitted as part of the record on appeal. Upon receipt of such certificate, the same proceedings shall be had in the traffic and municipal ordinance bureau as though the decision had been made there.

(j) **Pending Criminal Charges**. If the officer or a state's attorney informs the traffic and municipal ordinance bureau that criminal charges arising from the same evidence as form the basis for civil action will be charged or are pending against the defendant, the traffic and municipal ordinance bureau shall not schedule the civil action for hearing unless requested to do so by the issuing officer, a state's attorney or the defendant.

(k) **Municipal Complaint Waiver Penalties**. If a municipality has not determined a waiver penalty, the waiver penalty shall be established by the bureau. The administrative judge shall appoint a panel of hearing officers to establish waiver penalties for categories of violations charged under 24 V.S.A. §§ 1971-1981.

(l) **Definitions**. Unless specified to the contrary, the following words whenever used in this rule shall have the following meanings:

(1) For traffic violations, the term "officer" means the law enforcement officer or state's attorney who issued the traffic complaint; for municipal violations, the term "officer" means the town attorney, grand juror, or other designated person who issued the municipal complaint.

(2) The term "complaint" means traffic complaint or municipal complaint as the context requires.

(m) **Applicability of Civil Rules**. The District Court Civil Rules shall apply to proceedings under this rule, except for the following District Court Civil Rules: Rules 3 (Commencement of Action), 4 (Process), 4.3 (Arrest), 7(a) (Pleadings Allowed), 8 (General Rules of Pleading), 9 (Pleading Special Matters), 10 (Form of Pleadings), 12 (Defenses and Objections), 13 (Counterclaim and Cross-Claim), 14 (Third-Party Practice), 18-21 (Joinder), 24 (Intervention), 26-37 (Discovery), 40(a)-(d) (Calendar; Continuances), 41 (Dismissal of Actions), 55 (Default), 56 (Summary Judgment), 62 (Stay), 64 (Replevin), 65.1 (Security), 67 (Deposit in Court), 68 (Offer of Judgment), 74-75 (Review of Government Action), 76 (Transfer to Superior Court), 80 (Abuse Prevention), 80.3 (Small Claims) (except as set forth in subdivision (d) above), and 80.5 (Civil Suspension for D.W.I.). Rules 38, 39, 47, 48, 49, 50 and 51 shall apply only in the district court, and Rules 26-37 shall apply in the district court when permission to undertake discovery has been granted pursuant to subdivision (i)(3) of this rule. In case of a conflict between this rule and another District Court Civil Rule, the provisions of this rule shall govern.—Added May 29, 1990, eff. July 1, 1990; amended Dec. 21, 1992, eff. Dec. 1, 1992; Oct. 6, 1994, eff. Nov. 1, 1994; Aug. 10, 1995, eff. Sept. 1, 1995.

## VERMONT RULES OF APPELLATE PROCEDURE

### Rule 3. Appeal as of Right -- How Taken.

(d) **Content of Notice of Appeal**. A notice of appeal must specify the party or parties taking the appeal by naming each appellant in either the caption or the body of the notice of appeal. An attorney representing more than one party may fulfill this requirement by describing those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X." A notice of appeal filed pro se is filed on behalf of the party signing the notice and the signer's spouse and minor children, if they are parties, unless the notice of appeal clearly indicates a contrary intent. In a class action, whether or not the class has been certified, it is sufficient for the notice to name one person qualified to bring the appeal as representative of the class. A notice of appeal must also designate the judgment, order, or part thereof appealed from; must name the court to which the appeal is taken; and must be signed by the appellant or the appellant's attorney. A notice of appeal from an order in proceedings under Chapter 55 of Title 33 other than delinquency proceedings must indicate that the appeal is from such an order. An appeal will not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

## APPENDIX G

These statutes are in effect as of May 2001. Please check current statutes for updates.

### **Rule 4. Appeal as of Right – When Taken.**

In any civil or criminal case in which an appeal is permitted by law as of right, the notice of appeal required by Rule 3 shall be filed with the clerk of the superior or district court within 30 days of the date of the entry of the judgment or order appealed from, except that an appeal by the state in a criminal case shall be taken within seven days of the date of the entry of the judgment or order appealed from. A notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof. If a notice of appeal is mistakenly filed in the Supreme Court, the clerk of the Supreme Court shall note thereon the date on which it was received and transmit it to the clerk of the superior or district court, and it shall be deemed filed in the superior or district court on the date so noted. If a timely notice of appeal is filed by a party, any other party may file and serve a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires. In any criminal case resulting in a sentence of life imprisonment where the defendant has not waived appeal, the state may file a notice of appeal within 30 days of the date of the entry of judgment.

The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed in the superior or district court by any party pursuant to the provisions of the Rules of Civil Procedure, Rules of Criminal Procedure or District Court Civil Rules hereafter enumerated in this sentence, and the full time for appeal fixed by this rule commences to run and is to be computed from entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion for judgment under Civil Rule 50(b); (2) denying a motion under Civil Rule 50(c)(2) for a new trial; (3) granting or denying a motion under Civil Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (4) granting or denying a motion under Civil Rule 59 to alter or amend the judgment; (5) denying a motion for new trial under Civil Rule 59; (6) denying a motion under Civil Rule 60(b) for relief from a default judgment; (7) denying a motion for judgment of acquittal after verdict under Criminal Rule 29(c); (8) denying a motion for new trial under Criminal Rule 33 on any ground other than newly discovered evidence; (9) denying a motion in arrest of judgment under Criminal Rule 34; (10) granting or denying a motion to modify a sentence when filed by a prosecuting attorney under Criminal Rule 35(c). Denial of a motion for new trial under Criminal Rule 33 based on the ground of newly discovered evidence will similarly extend the time for appeal if the motion is made before or within 30 days after entry of judgment. A notice of appeal filed before the making or disposition of any of the above motions shall have no effect when filed. It shall be effective when the motion is decided unless thereafter withdrawn. A judgment or order is entered within the meaning of this rule when it is entered in the civil or criminal docket.

In any civil action, the superior or district court, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry and (b) that no party would be prejudiced, may, upon motion filed within 90 days of entry of the judgment or order or within 7 days of receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

The superior or district court may extend the time for filing the notice of appeal by any party (1) for good cause, with or without motion or notice, if request therefore is made before the expiration of the period originally prescribed by this subdivision; (2) for excusable neglect, upon motion and notice, if request therefore is made within 30 days after the expiration of the period originally prescribed by this subdivision. No such extension shall exceed 30 days past the time originally prescribed by this subdivision or 10 days from the date of entry of the order granting the motion, whichever occurs later.—Amended March 2, 1973, eff. Oct. 1, 1973; Dec. 18, 1973, eff. Oct. 1, 1973; Supreme Court order April 9, 1974; June 30, 1982, eff. July 1, 1982; Nov. 30, 1982, eff. Feb. 1, 1983; Jan. 9, 1985, eff. March 15, 1985; Aug. 7, 1990, eff. Oct. 15, 1990; Jan. 20, 1992, eff. March 2, 1992; Feb. 22, 1996, eff. July 1, 1996.

### **Rule 6 – Discretionary Appeals.**

(b) **Appeals Based on Supreme Court Permission.** When an appeal may be taken only with the approval of the Supreme Court, the party seeking to appeal shall file a request for permission to appeal with the clerk of the District or Superior Court. The request for permission shall be filed within 10 days of the date of the entry of the judgment or order to be appealed from except that the running of the time for filing a request for permission is terminated to the extent provided, and for the grounds stated, in Rule 4. It shall contain a statement of the question or questions of law to be raised on appeal and may contain argument and copies of papers or exhibits. The request shall be no longer than 10 printed or typed pages. Copies of the request shall be served on all parties.

## **APPENDIX G**

These statutes are in effect as of May 2001. Please check current statutes for updates.

The clerk shall transmit the request to the clerk of the Supreme Court. The clerk of the Supreme Court may request copies or originals of papers filed in the District or Superior Court to facilitate consideration of the request by the Supreme Court. No oral argument shall be heard on a request for permission to appeal to the Supreme Court. The decision of the Supreme Court on the request shall be in writing and be transmitted to the clerk of the District or Superior Court for entry.

If the Supreme Court grants permission, the appellant shall pay to the clerk of the Superior or District Court the entry fee required under 32 V.S.A. § 1431 within 10 days after the decision of the Supreme Court is entered in the District or Superior Court. The docket entries shall be included in the record which shall be transmitted and the action entered, heard and determined in the Supreme Court as provided by these rules for other appeals, provided that time limits that commence under these rules on the date of filing of notice of the appeal shall commence for an appeal under this subdivision on the date of the entry of the decision of the Supreme Court in the District or Superior Court.—Added Jan. 9, 1985, eff. March 15, 1985; Oct. 19, 1999, eff. Dec. 31, 1999.

## APPENDIX H

**JUDICIAL BUREAU**  
**PO BOX 607**  
**WHITE RIVER JUNCTION, VT 05001**  
802-295-8869


### Municipal Offense Codes and Descriptions

CODE	DESCRIPTION
abv.....	Abandoned vehicles
ancon.....	Animal nuisance control
arprt.....	Airport regulations
bikeskat.....	Bicycles, skateboards
bwp.....	Burning without permit
cat.....	Cats
circ.....	Licensure of circuses, carnivals
df.....	Discharge of firearms
discon.....	Disorderly conduct
dogs.....	Dogs
dp.....	Disturbance of the peace
eidl.....	Excessive idling
ent.....	Entertainment
exc.....	Excavation of street without permit
fa.....	False alarms
fbirds.....	Feeding birds
fwrk.....	Fireworks
gpp.....	Game playing in public place
gras.....	Grass – driving or walking on
hh.....	Hitchhiking
id.....	Illegal dumping
jy.....	Junkyard
lib.....	Library regulations
lit.....	Littering
loit.....	Loitering
lowe.....	Loaded weapon on person
msw.....	Municipal solid waste disposal
noise.....	Noise
npd.....	Non-patron dancing
oapo.....	Offense against police officer
ob.....	Open burning
obs.....	Obstructing sidewalk
oc.....	Open container
pd.....	Public defecation
ped.....	Peddlers, solicitation
ph.....	Panhandling
phas.....	Physical assault

## APPENDIX H

CODE	DESCRIPTION
pi .....	Public indecency
pnu.....	Public nuisances
pnud.....	Public nudity
pofa .....	Possession of firearm
pos.....	Possession of alcohol – minor
prk .....	Parking
psi.....	Possession of contraband items
pu.....	Public urination
rio.....	Riots
rtt.....	Restricted to traffic
sdis .....	School – disturbance
sfigh.....	School – fight
sign.....	Signs
sno.....	Snowmobiles
sqt.....	Squealing tires
sweap.....	School – weapons
testcode .....	Test code (old)
tpr.....	Taxi parking regulations
txr.....	Taxi regulations
uca.....	Unauthorized camping in public parks
utres.....	Unlawful trespassing
vari .....	Violating conditions of variance
voi .....	Void ticket
zon.....	Zoning permit, violation of

## APPENDIX I

<b>JUDICIAL BUREAU OF VERMONT</b>		<b>(802) 295-8869</b>  <b>P.O. Box 607</b> <b>White River Junction, VT</b> <b>05001-0607</b>
<b>REQUEST FOR COMPLAINTS</b>		
<b>REQUESTING DEPARTMENT:</b> _____		
<b>DEPARTMENT NUMBER:</b> _____		
<b>SHIPPING ADDRESS:</b> _____ _____		
<b>PLEASE NOTE DO NOT USE A POST OFFICE BOX NUMBER FOR THE SHIPPING ADDRESS.</b>		
<b>NUMBER OF COMPLAINTS BOOKS REQUESTED:</b> _____		
<b>TYPE OF COMPLAINT:    TRAFFIC, MUNICIPAL, LITTERING</b> <small>(CIRCLE ONE ONLY)</small>		
<b>ONLY ONE TYPE OF COMPLAINT PER FORM</b>		
<b>SIGNATURE OF REQUESTING OFFICIAL:</b> _____		
<b>PRINTED NAME OF REQUESTING OFFICIAL:</b> _____		
<b>DATE:</b> _____		
 -----		
<b>FOR JUDICIAL BUREAU USE ONLY</b>		
<b>ISSUED COMPLAINT NUMBER</b> _____ <b>TO</b> _____		

**APPENDIX J**

**JUDICIAL BUREAU**  
**PO BOX 607**  
**WHITE RIVER JUNCTION, VT 05001**  
802-295-8869

District Court of Vermont  
*Street Address*  
*City, State, Zip*

Municipal Complaint No. *number*  
*Municipality Name v. Defendant Name*

**NOTICE OF JUDGMENT, PAYMENTS AND BALANCE DUE**

Judgment was entered in the total amount of      *\$ dollars*  
*Defendant Name* paid the amount of              *\$ dollars*  
The balance due is    *\$ dollars*

\_\_\_\_\_  
date

\_\_\_\_\_  
(name of clerk), Docket Clerk



**APPENDIX K**

**JUDICIAL BUREAU  
PO BOX 607  
WHITE RIVER JUNCTION, VT 05001  
802-295-8869**

Custodial Official  
Municipality Name  
Street Address  
City, State, Zip

**REPORT OF NONPAYMENT**

*Date*  
*Municipality Name*

Judgments Unpaid more than 30 Days and No Contempt Motion Filed

<u>Complaint</u> <u>Number</u>	<u>Defendant Name</u>	<u>Judgment Date</u>	<u>Total</u> <u>Penalty</u>	<u>Paid</u>	<u>Unpaid</u>
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**APPENDIX L**

**JUDICIAL BUREAU  
PO BOX 607  
WHITE RIVER JUNCTION, VT 05001  
802-295-8869**

Town/City/Village of \_\_\_\_\_, Plaintiff ) Vermont Judicial Bureau Unit # \_\_\_\_\_  
 )  
v. ) Municipal Complaint # \_\_\_\_\_  
 )  
\_\_\_\_\_, Defendant )

**MOTION FOR NOTICE OF NON-PAYMENT OF JUDGMENT**

NOW COMES Plaintiff city/town/village of \_\_\_\_\_, by and through its (municipal attorney, grand juror or other designated municipal agent), and moves the Bureau for a Notice of Non-Payment to Defendant pursuant to 24 V.S.A. § 198(d). On \_\_\_\_\_, 2001, Defendant was found in violation of municipal ordinance Sec. \_\_\_\_\_ and ordered to pay a penalty of \$\_\_\_\_\_. The penalty has not been paid.  
(Affidavit of \_\_\_\_\_ [municipal agent].)

WHEREFORE, Plaintiff respectfully requests that the Bureau issue a Notice of Non-Payment.

DATED at \_\_\_\_\_, Vermont, this \_\_\_\_ day of \_\_\_\_\_, 2001.

(Municipality of ) \_\_\_\_\_

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title of Agent)

Motion Granted \_\_\_\_\_  
Motion Denied \_\_\_\_\_

\_\_\_\_\_  
(Hearing Officer)

**JUDICIAL BUREAU**  
**PO BOX 607**  
**WHITE RIVER JUNCTION, VT 05001**  
**802-295-8869**

Town/City/Village of \_\_\_\_\_, Plaintiff ) Vermont Judicial Bureau Unit # \_\_\_\_\_  
 )  
 v. ) Municipal Complaint # \_\_\_\_\_  
 )  
 , Defendant )

NOW COMES, \_\_\_\_\_[name]\_\_\_\_\_, \_\_\_\_\_[official title]\_\_\_\_\_, and after being duly sworn states:

1. I am the [municipal attorney, grand juror or other designated official] for the city/town/village of \_\_\_\_\_, a municipal corporation of the State of Vermont, and I have personal knowledge of the facts stated herein.
2. The Bureau entered a Judgment against Defendant \_\_\_\_\_ for municipal complaint #\_\_\_\_, which is now final, with a penalty of \$\_\_\_\_\_ for violation of a municipal ordinance.
3. The [municipality] has not received direct payment in full satisfaction of this Judgment.
4. The [municipality] has not received full payment satisfying this Judgment through any collection agency or individual employed to receive such payment on behalf of [municipality].
5. Partial payment of \$\_\_\_\_\_ has been received.
6. Pursuant to the Judicial Bureau's Report of Non-payment dated \_\_\_\_\_, full payment satisfying this Judgment has not been received by the Judicial Bureau.

**APPENDIX M**

Dated at \_\_\_\_\_, Vermont this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
(Title)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

**APPENDIX N**

**JUDICIAL BUREAU  
PO BOX 607  
WHITE RIVER JUNCTION, VT 05001  
802-295-8869**

*Defendant's Name*  
*Street Address*  
*City, State, Zip*

Municipal Complaint No. *number*  
*Municipality Name v. Defendant Name*

**NOTICE TO DEFENDANT TO PAY WITHIN 20 DAYS**

The [municipality name] obtained judgment against you on [judgment date] in the total amount of \$[judgment amount]. You have paid \$\_\_\_\_\_ toward the total amount, leaving a balance due of \$\_\_\_\_\_. Unless you pay the balance due within 20 days, the Judicial Bureau will request the District Court to schedule a hearing to decide whether you should be held in contempt.

YOU MAY AVOID CONTEMPT PROCEEDINGS BY SENDING PAYMENT IN THE AMOUNT OF \$\_\_\_\_\_ TO THE JUDICIAL BUREAU WITHIN 20 DAYS.

\_\_\_\_\_  
date

\_\_\_\_\_  
(name of clerk), Docket Clerk

## APPENDIX O

**JUDICIAL BUREAU**  
**PO BOX 607**  
**WHITE RIVER JUNCTION, VT 05001**  
802-295-8869

District Court of Vermont  
*Name*  
*Street Address*  
*City, State, Zip*

Municipal Complaint No. *number*  
*Municipality Name v. Defendant Name*

### NOTICE TO COMMENCE CONTEMPT PROCEEDINGS

On [notice date], the Judicial Bureau notified the defendant that the District Court would commence contempt proceedings unless the outstanding fine was paid in full within 20 days. The Judicial Bureau did not receive full payment. The Judicial Bureau's records show that the total assessment is \$\_\_\_\_\_ and that \$\_\_\_\_\_ remains unpaid. This notice is provided pursuant to 24 V.S.A. § 1981(e).

[Name of defendant] MAY AVOID CONTEMPT PROCEEDINGS BY IMMEDIATELY SENDING PAYMENT IN THE AMOUNT OF \$\_\_\_\_\_ TO THE JUDICIAL BUREAU.

\_\_\_\_\_  
date

\_\_\_\_\_  
(name of clerk), Docket Clerk

## APPENDIX P

### THE VERMONT JUDICIAL BUREAU DESIGNATION OF MUNICIPAL OFFICIALS FORM

Municipality Name \_\_\_\_\_ Municipality Number \_\_\_\_\_

Municipality Address \_\_\_\_\_

#### Custodial Official

Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Telephone \_\_\_\_\_

#### Treasurer

Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Telephone \_\_\_\_\_

#### Issuing Officials

1. Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Telephone \_\_\_\_\_
2. Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Telephone \_\_\_\_\_
3. Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Telephone \_\_\_\_\_
4. Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Telephone \_\_\_\_\_
5. Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Telephone \_\_\_\_\_

#### Appearing Officials

1. Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Telephone \_\_\_\_\_
2. Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Telephone \_\_\_\_\_
3. Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Telephone \_\_\_\_\_
4. Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Telephone \_\_\_\_\_
5. Name \_\_\_\_\_  
Title \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Telephone \_\_\_\_\_

Number of Ticket Books Required: \_\_\_\_\_

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