

MEMO

TO: City Council

FROM: Michael Schirling, Chief of Police
Karen Vastine, Community Justice Center Coordinator
Richard W. Haesler, Esq., Assistant City Attorney

RE: Civil Ticketing Ordinances

DATE: July 8, 2009

Introduction

This memo summarizes the proposed enhancement of the city's Civil Ticketing Ordinances. It represents a joint proposal by and the recommendations of the Burlington Police Department, the Community Justice Center, and the City Attorney's Office; and the concurring opinion of the Chittenden County State's Attorney. The Mayor has reviewed this proposal and fully supports it. The three attached proposed ordinances came before the City Council on June 15, 2009 for a first reading and were referred to the Ordinance Committee. The Ordinance Committee unanimously approved these proposed ordinances and recommended City Council approval.

This initiative co-exists with a parallel initiative to enhance prevention, education, outreach and intervention in hopes of reducing the number of ordinance violations and criminal offenses that reach the level of civil or criminal prosecution. Additional information about the systems approach we are undertaking is available upon request.

Background and Overview:

For several years the Police Department and Community Justice Center have been working to create meaningful alternatives to the traditional criminal justice system to hold low level offenders accountable utilizing the core tenets of restorative justice. Using community volunteer comprised restorative justice boards and a pre-arrest diversion process referred to as 'Alternative Justice', we have successfully diverted a host of low-level offenses from prosecution and the overburdened and under-resourced Court system.

Recent funding cuts to the State's Attorney's Office and to the Courts have amplified the need to have meaningful alternatives to the traditional Criminal Justice System, which is not well positioned to deal with low-level offenders such as those who commit disorderly conduct, unlawful mischief and unlawful trespass (unrelated to domestic violence). In low-level cases referred directly to the Court, because of the backlog of cases and priority given to more serious crimes, individuals who commit these crimes may not appear in court for weeks or months after the incident. A relevant, timely system of enhanced accountability is needed.

This proposal seeks to create an 18-month pilot project to expand the City's civil ticketing ordinances to address low-level criminal behaviors as a way of providing relief to an overburdened criminal justice system and to enhance accountability to the City. There is a growing sense that certain offenses are minimally addressed by the criminal justice system and prosecution in District Court is inefficient, expensive and time consuming. This pilot will require creation of a new part-time position at the Community Justice Center to handle the administrative aspects of these cases and of noise violation cases. An accounting of revenues generated will be made so as to document the viability of self-sustained funding going forward. The CEDO director has approved creation of a part-time temporary position at the Community Justice Center to handle the administrative aspects relating to implementation of this program. As a pilot project, progress reports to City Council will be submitted at the six and twelve month marks from the program's inception. The twelve month report will include an update as to whether the program has generated City funds sufficient to cover the expense of an ongoing limited service position. Conservatively estimating that the program will handle approximately 100 cases annually, we anticipate that the funds generated will support such a position. Per the attached resolution, a review of the pilot program will be conducted by the City Council after it receives its second report, at which time these ordinances may be continued, modified or terminated within the 18 month pilot timeframe.

The civil ticketing system we are proposing will operate along-side of the criminal process. The State's Attorney's Office will prosecute and/or approve referrals for second or third time offenders. A ticketed individual can participate in restorative justice which can mitigate the cost of the ticket and will ensure a response to the incident that holds the individual accountable, while also focusing on supporting the individual's restoration of the harm caused by the crime.

Existing Authority Afforded to Municipalities:

Chapter 61 of Title 24 provides regulatory provisions regarding the police powers of municipalities. This is separate and apart from the enforcement of the criminal code of Title 13. It provides for enactment of civil ordinances related thereto.

24 V.S.A. § 2291 enumerates the powers which a town, city or incorporated village has been authorized to enforce (for the purpose of promoting the public health, safety, welfare and convenience). For purposes of looking for authorization to regulate conduct which might also be addressed by the criminal statutes, a municipality must find existing authorization within § 2291 or seek to expand the enumerated powers by amending § 2291.

§2291 provides authorization for regulation of certain specific acts; use of and discharge of firearms, keeping of dogs, possession of open containers of alcoholic beverages, public consumption of alcoholic beverages to name a few. Otherwise, ordinances can be enacted where the regulated conduct falls within the ambit of more general language found in other provisions. Specifically, the enabling legislation for addressing certain nuisance behaviors which might also be charged criminally is found in subsection (14) which states:

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.

Additional enabling authority exists within the City Charter at Section 48 (see sub-sections #5, #6 and # 33 re noise, disturbances, nuisances, trespasses, willful injury to property), and Sections 49 to 52 (enactment of ordinances and penalties).

The City of Burlington has enacted a variety of ordinances to address nuisance behavior. Examples include: Noise Control ordinance, Urination and defecation in streets, Graffiti and defacement of property, and Littering.

Conclusion:

Attached please find a chart which we have included to illustrate criteria and mechanics for implementation of these proposed new ordinances. The proposed new ordinances are included in your packet. At this time, we are requesting that you approve these ordinances on second reading and adopt the attached resolution which calls for reports on the program's progress and subsequent review of the program relating to these ordinances by the full Council.

Proposal for Graduated Ticketing & Restorative Justice Matrix for Low Level Offenses

Offense <i>(only eligible if there is not a secondary offense)</i>	Eligibility for alternative justice processes (including tickets and restorative justice)	Ticket Amount	Restorative Justice Referral?	Referral to State's Attorney's Office?
First	<ul style="list-style-type: none"> - Respondent did not resist arrest and/or Police did not need to use force during arrest - Person is not a habitual or chronic offender 	\$250	Fine may be mitigated to as little as \$100 if: <ul style="list-style-type: none"> - the individual accepts responsibility for their offense and agrees to participate in the program - the individual successfully completes the restorative justice program 	Optional <i>The BPD, State's Attorney and CJC have a standing agreement regarding the direct referrals (pre-charge) to the CJC</i>
Second	<ul style="list-style-type: none"> - Behavior is not escalating (violence not increasing) - Respondent did not resist arrest and/or Police did not need to use force during arrest - Person is not a habitual or chronic offender 	\$300	Fine may be mitigated to as little as \$150 if: <ul style="list-style-type: none"> - the individual accepts responsibility for their offense and agrees to participate in the program - the individual successfully completes the restorative justice program 	Yes Communicate with State's Attorney's Office and/or directly refer
Third	Unlikely that person would qualify, but case would still be considered if: <ul style="list-style-type: none"> - Behavior is not escalating (violence not increasing) - Respondent did not resist arrest and/or Police did not need to use force during arrest - Person is not a habitual or chronic offender 	\$400	All entities would meet to discuss case. (If a juvenile case, there is already a system in place for case review.) If eligible, the fine may be mitigated to as little as \$350 if: <ul style="list-style-type: none"> - the individual accepts responsibility for their offense and agrees to participate in the program - the individual successfully completes the restorative justice program 	Yes If CJC takes case third time, a referral by State's Attorney's Office would be required