

TOWN OF FAIRFAX

CHAPTER ONE

ORDINANCE OF GENERAL PROVISIONS

SECTION 1: Authority.

This ordinance is adopted by the Selectboard of the Town of Fairfax, VT pursuant to the provisions of Title 24, Vermont Statutes Annotated, Chapter 59.

SECTION 2: Purpose.

It is the purpose of this ordinance to provide rules for the construction and enforcement of all other ordinances of the Town of Fairfax. The provisions herein shall supersede those in all previously adopted ordinances of the Town of Fairfax.

SECTION 3: Definitions and Rules of Construction.

In the construction of all Town of Fairfax ordinances, the following rules shall be observed:

County. The term "county" or "this county" shall mean the County of Franklin, Vermont.

Computation of time. Whenever a notice is required to be given or an act to be done a certain length of time before any proceeding shall be had, the day on which such notice is given, or such act is done, shall not be counted in computing the time, but the day on which such proceeding is to be had shall be counted.

Delegation of authority. Whenever a provision appears requiring the Town officer or employee to do some act or perform some duty, it shall be construed to authorize the officer or employee to designate, delegate and authorize subordinates to perform the required act or perform the duty unless the terms of the provision or section specify otherwise.

Gender. A word importing either the masculine, feminine, or non-binary gender shall extend and be applied to all genders, and to firms, partnerships and corporations.

Municipal Official. See Section 9 herein.

Number. A word importing the singular may extend and be applied to the plural, and vice versa.

Oath. The word "oath" shall include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

Or, and. "Or" may be read "and," and "and" may be read "or" if the sense requires it.

Owner. The word "owner," applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety, of the whole or of a part of such building or land.

Person. The word "person" shall extend and be applied to associations, clubs, societies, firms, partnerships and bodies politic and corporate as well as to individuals.

Property. The word "property" shall include real, personal and mixed property.

Selectboard: The term "town board" or "board" or "select board" or "selectmen" shall mean the Selectboard of the Town of Fairfax, Vermont.

Signature or subscription includes a mark when the person cannot write.

State. The words "the state" or "this state" shall mean the State of Vermont.

Tense. Words used in the past or present tense include the future as well as the past and present.

Town. The words "the town" or "this town" shall mean the Town of Fairfax, and shall extend to and include its several officers, agents and employees.

Town board, board.

Written or in writing shall include any representation of words, letters or figures, whether by printing or otherwise.

SECTION 4: Catchlines of Sections.

The catchlines of the several sections of ordinances printed in boldface type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor as any part of the section; nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

SECTION 5: Amendments to Ordinances.

- a. Amendments to any of the provisions of ordinances should be made by amending such provisions by specific reference to the section of the ordinance in substantially the following language: "That section _____ of the _____ Ordinance of the Town of Fairfax, Vermont, is hereby amended to read as follows: . . . (Set out new provisions in full)"
- b. In the event a new section not heretofore existing in an ordinance is to be added, the following language may be used: "That the _____ Ordinance of the Town of Fairfax, Vermont, is hereby amended by adding a section (or article, chapter or other designation

as the case may be), to be numbered _____, which reads as follows: . . . (Set out new provisions in full). . . ."

SECTION 6: Supplementation of ordinances.

- a. By contract or by town personnel, supplements to ordinances shall be prepared and printed whenever authorized or directed by Selectboard. A supplement to ordinances shall include all substantive permanent and general parts of ordinances passed by the Selectboard or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in ordinances. The pages of a supplement shall be so numbered that they will fit properly into the ordinance and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the ordinance will be current through the date of the adoption of the latest ordinance included in the supplement.
- b. In preparing a supplement to an ordinance, all portions of an ordinance which have been repealed shall be excluded from the ordinance by the omission thereof from reprinted pages.
- c. When preparing a supplement to an ordinance, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, non-substantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:
 - (1) Organize the ordinance material into appropriate subdivisions;
 - (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the ordinance printed in the supplement and make changes in such catchlines, headings and titles;
 - (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the ordinance and, where necessary to accommodate new material, change existing section or other subdivision numbers;
 - (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections to" (inserting section numbers to indicate the sections of the ordinance which embody the substantive sections of the ordinance incorporated into the ordinance); and
 - (5) Make other non-substantive changes necessary to preserve the original meaning of ordinance sections inserted into the ordinance; but, in no case, shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the ordinance.

SECTION 7: Effect of Repeals and Severability.

The repeal of an ordinance or portion of an ordinance shall not revive any ordinance or portion of the ordinance in force before or at the time the provision repealed took effect. The repeal of an

ordinance or a portion of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal for an offense committed under the provisions repealed.

It is hereby declared to be the intention of the Selectboard that the sections, paragraphs, sentences, clauses and phrases of ordinances are severable, and if any phrase, clause, sentence, paragraph or section of an ordinance shall be declared unconstitutional, invalid or unenforceable, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of an ordinance.

SECTION 8: General Penalty and Violations.

Whenever in any ordinance of the Town any act is prohibited or is made or declared to be unlawful, an offense or a misdemeanor, or whenever in such ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefor, the violation of any such provision of this ordinance shall be punished as outlined below.

This section shall be known and may be cited and referred to as "Civil Enforcement Ordinance of the Town of Fairfax."

- a. Civil ordinance violations jurisdiction; enforcement of civil ordinance violations:
 - (1) A civil penalty (a fine not more than that allowed by law) may be imposed for a violation of a civil ordinance. Each day the violation continues shall constitute a separate violation. The following penalties may be assessed for all municipal complaints:
 - First offense. \$200.00
 - Second offense. 400.00
 - Third and subsequent offenses. 800.00
 - Waiver fee (first offense). 100.00
 - Waiver fee (second offense). 200.00
 - Waiver fee (third and subsequent offenses). 400.00
 - (2) All civil ordinance violations and all continuing civil ordinance violations, where the penalty is eight hundred dollars (\$800.00) or less, shall be brought before the judicial bureau pursuant to Title 24, Chapter 59 and Title 4 of the Vermont Statutes Annotated.
- b. Civil ordinance violation complaint; complaint for municipal civil ordinance violations:
 - (1) The summons and complaint shall be a form known as the "municipal complaint."
 - (2) The municipal complaint 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 (2) copies shall be given to the defendant.
 - (3) 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.
 - (4) The municipal complaint shall contain a description of the ordinance allegedly violated, the allegations, the amount of the penalty, and an explanation of rights and

instructions on answering the allegations. The municipal complaint shall contain, in boldface print, the following:

"IF YOU ADMIT TO A VIOLATION OF THE ORDINANCE OF THE TOWN/CITY/VILLAGE OF OR IF YOU DO NOT CONTEST THE ALLEGATIONS, SIGN THE COMPLAINT ADMITTING THE VIOLATION OR STATING THAT THE ALLEGATIONS ARE NOT CONTESTED AND SEND IT TO THE JUDICIAL BUREAU WITHIN 20 DAYS.

"IF YOU WANT TO DENY THE ALLEGATIONS IN THIS COMPLAINT, YOU MUST SEND A SIGNED DENIAL TO THE JUDICIAL BUREAU WITHIN 20 DAYS.

"IF YOU DO NOT ANSWER THIS COMPLAINT WITHIN 20 DAYS, A DEFAULT JUDGEMENT WILL BE ENTERED AGAINST YOU AND YOU WILL BE REQUIRED TO PAY A FEE OF TWENTY DOLLARS (\$20.00) FOR FAILURE TO ANSWER THE COMPLAINT WITHIN THE TIME ALLOWED. THE FAILURE TO PAY THE PENALTY ASSESSED WILL RESULT IN FURTHER LEGAL ACTION AGAINST YOU.

"IF YOU ADMIT OR DO NOT CONTEST OR DO NOT ANSWER, YOU WILL BE LIABLE FOR THE AMOUNT INDICATED IN THE COMPLAINT."

- c. Civil ordinance violation response; answer to municipal complaint; default:
- (1) A person who is charged with a municipal civil ordinance violation shall have twenty (20) days from the date the municipal complaint is issued to admit or deny the allegations or to state that they do not contest the allegations in the complaint.
 - (2) A person who admits or does not contest the allegations may so indicate and sign the complaint. The judicial bureau shall accept the admission or statement that the allegations are not contested and accept payment of the waiver fee.
 - (3) If the person sends in the amount of the waiver penalty without signing the complaint, the judicial bureau shall accept the payment indicating that payment was made and that the allegations were not contested. If the person who admits the violation fails to pay the waiver fee, the judicial bureau shall enter a default judgment against the person.
 - (4) A person who denies the allegations may so indicate and sign the complaint. Upon receipt, the judicial bureau shall schedule a hearing.
 - (5) If a person fails to appear or answer a municipal complaint or fails to appear at a municipal hearing, the judicial bureau shall enter a default judgment against the person. The judicial bureau shall assess the full penalty provided for in the ordinance found to have been violated. 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.
- d. Civil ordinance violation hearing:
- (1) The judicial bureau shall notify the person charged and the issuing official of the time and place for the hearing.

- (2) 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 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.
 - (3) The municipality may be represented by a municipal official. "Municipal official" shall be defined as being any Vermont law enforcement officer, Fairfax zoning administrator / administrative officer, Fairfax town manager, Fairfax fire chief, Fairfax deputy fire chief, Fairfax battalion fire chief, Fairfax fire captain, Fairfax fire lieutenant, Fairfax health officer, designated Fairfax animal control officer, Fairfax fire warden, and Fairfax deputy fire warden.
 - (4) At the hearing, the municipal official may dismiss or amend the complaint, subject to the approval of the hearing officer.
 - (5) The hearing officer shall make findings which shall be stated on the record or, if more time is needed, shall make written findings at a later date. The hearing officer may make a finding that the person has committed a lesser-included violation.
- e. Civil ordinance violation appeals:
- (1) A decision of the hearing officer may be appealed to the Criminal Division of the Superior Court. The proceeding before the Criminal Division of the Superior Court shall be on the record, or at the option of the defendant, de novo. If the appeal is de novo, the defendant shall have the right to trial by jury. An appeal shall stay payment of a penalty.
 - (2) If a decision is appealed, the municipal attorney shall represent the municipality.
 - (3) No appeal as of right exists to the Vermont Supreme Court. On motion made to the Vermont Supreme Court by a party, the Vermont Supreme Court may allow an appeal to be taken to it from the criminal division of the superior court.
 - (4) If an appellant prevails on an appeal to the criminal division of the superior court, the Town will reimburse the filing fee paid.

SECTION 9: Municipal Official and Enforcement of Municipal Ordinances.

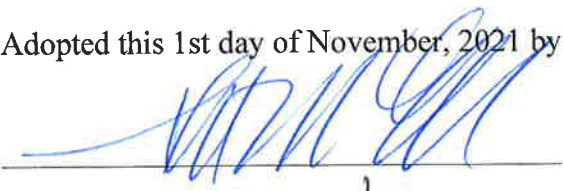
In accordance with and pursuant to 24 V.S.A. Chapter 59, the following town officers and staff are hereby designated and appointed as "municipal officials," as that term is used in Chapter 59; and as such each is hereby granted the authority, subject to the direction of the town manager, to enforce the provisions of the ordinances, as specified below, and specifically to issue municipal civil complaints alleging violations of said ordinances:

| Ordinance | Designated Municipal Official |
|--|---|
| Open Burning and Incineration | Fairfax fire chief; Fairfax deputy fire chief; Fairfax battalion fire chief; Fairfax fire captain; Fairfax fire lieutenant; Fairfax Fire Warden; Fairfax Deputy Fire Warden |
| ATVs | Law enforcement officers |
| Building Inspection, Code Enforcement, and Fire Safety Ordinance | Battalion chief |
| Development Regulations | Zoning administrator / administrative officer |
| Fire Department Service Reimbursement | Fire chief; Battalion chief |
| Flood Hazard Area Regulation | Zoning administrator / administrative officer |
| Impact Fee Ordinance | Zoning administrator / administrative officer |
| Highways | Law enforcement officers; town manager |
| Sewer Allocation and Connection | Town manager |
| Special Events | Zoning administrator / administrative officer; town manager |
| Traffic | Law enforcement officers; town manager |
| Water | Town manager |

SECTION 10. Effective date.

This ordinance shall become effective sixty (60) days after its adoption by the Fairfax Selectboard or at such time following the expiration of the 60 days from the date of its adoption as is determined by the Fairfax Selectboard per 24 V.S.A. § 1973. If a petition is filed under 24 V.S.A. § 1973, that statute shall govern the taking effect of this ordinance.

Adopted this 1st day of November, 2021 by the Selectboard of the Town of Fairfax.



Randy J. DeWine
Drew Perry



Stephen E. Bersoff