

ORDERED - Don't Do That Again!

What to do about repeat offenders?

Our city already has the statutory authority to obtain injunctive relief (and incarceration) against repeat offenders.

12 V.S.A. § 1025 (c) provides:

"The Judicial Bureau, on application of a municipality, may order that a civil ordinance violation cease."

- Including for repeat offenders of municipal criminal ordinances.

12 V.S.A. § 1974(b) provides in relevant part:

*"*** the Superior Court, on application of the legislative body of a municipality, shall have jurisdiction to enjoin the violation of an ordinance or rule..."*

- Such cease "order" can be enforced two ways: "criminal contempt"* (including **incarceration** for past violations* of the order) and "civil contempt" (**incarceration** until the person complies with terms of the order). (*This is subject to the constitutional double-jeopardy prohibition - meaning the government may have to choose between prosecuting for criminal contempt or for a similar criminal offense.)
- To be even more clear - our state law does not require repeated violations.

The political theater of our city council which entertained disparaging our poor, passing resolutions for more ordinances, yet more committees meetings - only serves to highlight their past failures to use existing laws, the waste and futility of drafting more, and gross inability to effectively govern | police our community.

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10 – 25 individuals...

“Wright said the ordinance change would aim to help police reduce unlawful behavior by what he described as a small number of people in the order of 10-25 individuals.” Kurt Wright (Republican) criminalization sponsor as reported by VT Digger.

Lobbied to make petty-civil-infractions instead first-time jailable crimes - our City was next lobbied for a three-strikes approach couched as jail for “contempt of court” for the non-payment of fines - such revised scheme does nothing to alter that people too poor to pay fines cannot in lieu be imprisoned.

Incarceration is unconstitutional substitution for persons too impoverished to pay fines - unanimous decision of U.S. Supreme Court: Tate v. Short (1971); see also Williams v. Illinois (1970); Bearden v. Georgia (1983).

35% of the Burlington’s residents are impoverished... (U.S. Census).

Wright-wing extremism? Incarcerating people too poor to pay fines is tantamount to debtor’s prison (prohibited by Vt. Const. Ch. II, § 40). Instead let’s protect and keep our 17th century civil rights! “*Begining in 1830, an insolvant debtor could take a poor debtor’s oath and be released. After 1838 there was no imprisonment for new debt.”* **Vermont Secretary of State.** Do we even need a municipal ordinance for contempt (esp for a mere 10-25 offenders)? No. We already have state laws for contempt: **12 V.S.A. §§ 121-123**; And courts already have **inherent power** to enforce their own orders and find people in contempt.

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Do you know our state law?

Public toilets / sinks

Title 20 V.S.A. 2900 et seq. requires nearly all private property owners and government entities to have restrooms for public use (except private homes and small farms).

Can these toilet facilities be restricted to only paying customers?

No.

This violates our state-wide plumbing code. See IPC §403.6.3., and IPC §403.6

Why is this our law?

Is this toilet socialism trampling private property rights good policy? And is it good for business?

Sept 2017 - San Diego: **16 fatalities**; nearly **300 hospitalization**; **450** confirmed cases of **Hepatitis-A** directly linked to lack of restroom access for the poor. **Jumps to Los Angeles County**. L.A. Times: <http://www.latimes.com/local/california/la-me-ln-hepatitis-la-20170919-story.html>

Vermont uses the International Plumbing Code (IPC) which is a model code used by 34 states, the District of Columbia; and several territories. **Radical or Socialist?** You decide.

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In the news:

PARIS TURNS TO FLOWER-GROWING TOILET TO FIGHT PUBLIC URINATION...

BY DAN BILEFSKY FEB. 2, 2017

New York City Council down-grades littering; excessive noise; and in a city which has long suffered drunken urinating revelers – public urination. Part of its effort to divert minor offenders from its already overstretched court system. Nevertheless, offenders face a fine of \$350 to \$450 if they commit a third offense within a year...

By Stand w/ Poor Sept.26, 2017, Burlington Vermont.

Former Democrat, Councilor Hartnett stood by and watched while local restaurant violated state laws* denying use of restroom to visitor who then urinated on floor. More embarrassingly Councilor Hartnett called for criminalization of poor victims of toilet discrimination – and even more embarrassing the City council passed the resolution.

By Katie Jicklings - Sevendays Aug. 23 2017

“Hartnett recounted an experience earlier this summer at a business in the same vicinity. He was eating at Junior's Downtown when a homeless man entered and asked to use the restroom. When employees told him it was for paying customers only, he urinated on the floor, Hartnett recalled...” <https://www.sevendaysvt.com/vermont/begging-for-change-burlington-stabbings-prompt-proposed-penalties/Content?oid=7467784>

And in the law....

* International Plumbing Code § 406.3.1 (Vermont's adopted state-wide code). “Required facilities shall be free of charge...”

* Title 20 V.S.A. § 2900 et seq.; Broadly defines what places are public and thus must have restrooms for use by public. Rule of thumb – every place including some sheds, tents, and barns, (except private homes and some farms).

* Vermont Constitution (common benefits provision): “That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community”, Vt. Const., ch. I, art 7.

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Does your elected official know the law?

Public Intoxication: Title 18 Vermont Statutes §§ 4801-4809 explicitly prohibits criminalization of public inebriation.

Why is this our State law?

- *Because for a half century U.S. Courts have held it unconstitutional to criminalize addiction. For example U.S. Supreme Court: Robinson v. California 370 U.S. 660 (1962).*
- *Because to jail homeless alcoholics for public intoxication was declared to be cruel and unusual punishment: Easter v. District of Columbia, 361 F.2d 50 (D.C. Cir. 1966) (en banc), and Driver v. Hinnant, 356 F.2d 761 (4th Cir. 1966). See also: Justice White concurring opinion Powell v. Texas 393 U.S. 514 (1968).*
- *Because it Violates State Constitution(s) West Virginia Supreme Court of Appeals: State Ex Rel. Harper v. Zegeer 296 S.E.2d 873 (1982).*
- *Because it's a Misuse of judicial resources (Public statements by Chief Justice of the Vermont Supreme Court regarding addiction and court access.)*

And because other peer cities, like Austin, San Francisco, Denver, Houston, Boise, and San Antonio, are decriminalizing - making our city a regressive outlier.*

**next-tier city to emulate for downtown "quality of life": City of Burlington, Vermont, Downtown Housing Strategy Report May 2014*

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