

GARDEN STATE CLE LESSON PLAN

A 1.5 credit course

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LESSON PLAN AND EVALUATION**

MUNICIPAL COURT TRIAL CERTIFICATION EXAM TRAINING: MUNICIPAL ORDINANCES

With

**Hon. Paul Catanese,
Presiding Judge Municipal Court (ret.)**

And featuring

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Senior Instructor**

Program description

The local ordinances found in the municipal code can wind up taking up a large chunk of a municipal court judge's time behind the bench. This 1.5 credit program will help you prepare for the trial certification exam.

I. Introduction

- **Hon. Paul Catanese, Presiding Judge Municipal Court (ret.)**

II. Authority to Pass Ordinances

- **New Jersey is a constitutional entity and counties are constitutional entities but municipalities are only able to do that which is granted by the Legislature**
- **Counties and municipalities are grouped together by the Legislature as to what authority they were given to adopt ordinances**
- **Municipalities have no authority to legislate unless there is a grant of such authority by the State Legislature**
- **Title 40 gives authority to counties and municipalities – limits discretion to health, safety and welfare issues**
- **Ordinances that are outside of the health, safety, and welfare – exceeds authority granted by Legislature, in other words, violates the terms of the NJ Constitution – people can move to have cases dismissed in municipal court by arguing that the ordinance falls outside the authority granted by the Legislature**
- **Ordinances v. Resolution**
 - **Ordinance requires an introduction and time frame before action taken and public to comment and then adoption of ordinance**
 - **Criminal or quasi criminal in nature – limits and punished for incorrect conduct**
 - **Full disclosure**
 - **Transparency**
 - **Opportunity for people to be involved in the process**
 - **Resolution can all occur very quickly**
 - **Establishing a parking sign – some type of more minor area of law**
 - **Not generally dealing with serious matters like ordinances**
 - **Simpler process**
 - **Public comment period because it is at a council meeting but can be proposed and voted on at the same time**
- **Legislature tells you ahead of time whether government entities can use an ordinance or resolution to resolve an issue**

- **County counsel reviews what is the proper approach to take – drafts language and then signs off as to legality and form [or town attorney for municipality]**

III. Addressing Ordinances in Municipal Court

- **Approximately 15% of bench time taken by ordinances**
- **Depends on what court you were in, i.e. party at a University may bring a large number of underage drinking violations – increase in volume of ordinance cases**
- **State v. DeAngelo, 197 NJ 478 (2009) – ordinance case of whether ordinance was constitutional**
- **Court Rule 7:7-1 – Pretrial Procedures; pleadings and objections – authorizes municipal court judges to determine whether an ordinance is constitutional**
- **If a state statute is implicated then you may want to include the AG’s office; if state statute authorizes municipality to make certain ordinances, then may consider AG’s office joining – not common practice**
- **R. 7:7-1 permits motion in municipal court and judge has authority to rule on constitutionality of ordinance – put town attorney on notice**
- **Constitutionality of state statute must be done in Law Division on notice to AGs because municipal courts have limited jurisdiction – act of Legislature is better heard in Superior Court**
- **Municipal court judges must stay out of political arena in every way possible**
 - **Problematic when there is an issue as to constitutionality of ordinance and municipal court judge ruling against the governing body that passed the ordinance**
 - **Judges can be placed in the middle of a political issue/argument**
 - **Judges should not be influenced by other branches of the government**
- **R. 1:12-1 Disqualification and Disability of Judges; Cause for Disqualification; On the Court’s Motion**
 - **Whenever a judge feels that he/she should not be independent, then should recuse him/herself – reappointment should not be part of the determination**
 - **In order to avoid such issues, the town may want to file a civil action seeking injunctive relief against the ordinance**

violator which would shift the burden to the ordinance violator to show that they did not violate the ordinance, as opposed to the town filing a quasi-criminal ordinance violation case in municipal court which would result in the town trying to prove its case beyond a reasonable doubt and may not be able to do so, i.e. zoning issues

- **Ordinances can stir up emotions of the community**
- **Subject matter jurisdiction for ordinances is given to municipalities**
- **There is no statute of limitations on ordinances that comes from a statute! However, the Appellate Division through caselaw has given a 1 year limitation of action on ordinances**

IV. Issuance of Process in Municipal Court

- **Burden of proof – beyond a reasonable doubt; no statute that says what the burden may be – burden comes through caselaw**
 - **Penalties are similar to DP and PDP offenses, therefore burden of proof is appropriate standard – even though not stated in statutes**
 - **a handful of cases establish the burden of proof**
- **Issuance of process in municipal court**
 - **Law enforcement officer can sign complaint or ordinance (special form of summons) and indicate what violation was and have authority under Court Rules to sign off without need for judge to sign off on – court administrator or deputy court administrator can sign off on probable cause**
 - **Probable cause may be found by police officer alone – codified in the Rules of Court**
- **R. 7:2-2(a)(3) allows code enforcement officers to by-pass judicial review for ordinance enforcement**
 - **Code official is assumed to know what a violation is and therefore can determine probable cause for ordinance violations**
 - **Job of code enforcement is that they are trained in that particular code – but cannot go outside area of training/expertise**
- **Private citizens issuing a complaint – need a judicial determination of probable cause**

- **Complaint may be dismissed on the record when judge determines there is no probable cause – this occurs after deputy and court administrator determine insufficient probable cause**
 - **If process is not going to issue, probable cause hearing – should not require adversary party to appear because if case is dismissed then just causes animosity**
 - **Probable cause hearing for all intents and purposes is ex parte, although done on the record in open court**
- **Must be on Complaint unless there is a rational reason for Warrant**
 - **No form allows ordinance violation to be placed on a warrant**
- **Dog ordinances are very emotional issues**
- **Court officials are not in the position to tell people what ordinance to charge in a violation brought by a private citizen – this can effect the outcome of the case**
 - **Best to utilize municipal officers, i.e. code enforcement, animal control, etc. as resources to determine what is the most appropriate ordinance**
 - **In the alternative, bring the violation to the attention of the appropriate municipal officer and have them issue the violation, if appropriate**

V. Penalties for Ordinance Violations

- **Disproportionate response between ordinance violations and penalties – stakes are big as emotional, as opposed to penalties**
- **Statute authorizes municipalities to set certain penalties**
 - **Violations bureau schedule is set by the municipality – that which can be paid to the violations window, as opposed to going to court – town must present to municipal court judge outlining which can be paid without going to court**
 - **Every year presiding municipal court judge is supposed to look at the violations schedule – supposed to be submitted to Assignment Judge for her signature**
 - **Sometimes this would alert PJMC to ordinances that were pre-empted**
- **Ordinances come from local politics – so people will complain to the mayor and other political figures when there is an issue with how the court is dealing with ordinance violations**
- **Daily violations are allowed which can equate to a very high fine**

VI. Plea bargaining in Municipal Court relative to Ordinances

- **Review plea just like any other type of case – is it in the interest of justice, i.e. speak to “victims” who have been affected by a particular ordinance violation**
- **Underage drinking violations – should look at the underlying issues in the case, not just the violation itself – look at facts**
- **Individual justice in individual cases – ordinances, state statutes, etc.**
- **Favored way to resolve cases**
- **Public defender may be assigned if the penalties are so extreme (\$750 or more)– but must fall within proper financial parameters**
- **Improper use of ordinances in plea agreements**
 - **Not favored unless you can get factual basis for it – must choose an ordinance that fits the facts of the case – see Rules of Court**
 - **Desire to not have the person have a criminal record or significant MV offense – so resolve by alternate means**
 - **Ordinance for expungement purposes has only a 2 year waiting period and unlimited number of ordinances can be expunged**
- **Pre-emption issues in plea negotiations**
 - **i.e. prostitution case – running a massage parlor, undercover officer investigates, charged with DP prostitution, plea offer is to running a business without a license in violation of municipal ordinance**
 - **not necessarily a pre-emption issue**
 - **pre-emption would be if ordinance is passed that has similar elements to a state statute**
 - **when legislature has spoken about a particular type of behavior, and municipality has an ordinance that is similar in nature, then ordinance is not enforceable because pre-empted by state law**
 - **municipal court judge presented with ordinance that is pre-empted for plea agreement – then judge should reject plea offer**
 - **once the state set forth its policy on those things, then you can no longer take advantage of a plea agreement to a pre-empted ordinance**

- **NJSA 2C:29-1 Obstructing** – also a municipal ordinance in a particular town – probably pre-empted (also consider **2C:29-3 Hindering**) – when ordinance plea, all money stays in the town, as opposed to money going to the state, as well as other benefits to the defendant
- **JMC must uphold the law and not allow these types of pleas**
- **Difficulty in proper sentencing when you have an ordinance plea that is pre-empted as opposed to a proper plea offer**
- **Borderline unethical for an attorney to propose a plea offer that allows for a pre-empted ordinance to be part of the plea agreement**
- **AOC says subject to court decision if the town attorney deems that the ordinance is not pre-empted then allowed to be on the schedule until it is attacked in court**
- **Plea agreements to ordinances for traffic violations**
 - **Municipality keeps all the \$\$ - revenue generating move**
 - **Judge must indicate to prosecutor that he/she may not allow this type of plea agreement**
 - **Must administer justice**
 - **Points can still be assessed by MV commission even if you plead to an ordinance that is similar in nature**

VII. Sentencing in municipal court for ordinances

- **Sentencing authority: NJSA 40:49-5** – penalties for violations of municipal ordinances – fines up to \$2000, 90 days in jail, community service, provision for individuals who cannot pay for jail, no provision for sentencing to loss of license
- **Factors for setting fines in ordinance violations:**
 - **Nature of offense and cost benefit analysis for the conduct – deterrent value – incentive to comply with the law**
 - **Many ordinances have parameters for fines set forth in the law**
 - **Loss of license – discretion in underage drinking ordinance only – by statute, must be 6 months if judge imposes at all**
- **Jail sentences**
 - **Underage drinking when person violates a probationary term**
 - **Prefer community service as opposed to jail – depending on the situation, i.e. extreme housing violations**

- **Condition of probation can be to remedy the housing violations and then subject to sentencing which may be jail or community service**
- **Probation for ordinances is not set forth in the statutes, but is just accepted through caselaw and common practice**

VIII. Underage drinking ordinance

- **No tolerance in many towns because potential is so great for people to be seriously injured or killed**
- **Towns take a strong position and universities where offenses occur take this seriously as well**
- **Not really the fines that are the problem, \$250 fine**
- **Probation and loss of license are the impetus for defendants to deal with this problem**
- **Language of ordinance is spelled out in the statute – town attorney can just adopt same language from statute**
- **Statutory unity**
- **Amendment to law enacted that provides when there is an underage drinker and person in need of medical assistance that someone else (underage drinker) can call 911 and give name and says person needs help – both people would be immune from prosecution – you must be the first person who calls – up to 2 people can get immunity under this amendment**
- **Probation and terms and conditions usually assist**

IX. Grant of Authority for Towns to Detain Intoxicated Drivers after Police are done processing

- **There are some towns who have adopted such an ordinance**
- **If detained for more than 8 hours must have a hearing**
 - **Not likely to have happened because no longer going to be intoxicated after 8 hours**
 - **Insure not going to be intoxicated when leaving the facility and not being detained for any other reason**
 - **No guidelines set forth for this hearing – nothing written down that provides for proper due process rights**
- **Purpose of detaining for 8 hours is to alleviate level of intoxication**
- **BAC under .05 is “get out of jail free” card and not under the influence – consider drug involvement??**
- **Does not apply to NJ State Police because they have no place to house anyone for up to 8 hours**

- **For this reason many towns have not adopted this ordinance – no place, medical needs of detainee, feeding detainees, etc.**
- **Impeding ability to have blood analyzed if you are detained under such an ordinance**
- **Another statute allows for person to be released to a third party separate and apart from this detainer ordinance**
- **As a practical matter, does it comport with the reality of situations?? But then look at public policy issue that such an ordinance is to address**

X. Health, Safety, Welfare of Ordinances

- **Housing, zoning, plumbing, snow, dogs, signage, obscenity, parking**
- **State statute allows ordinance to be adopted for handicapped parking – penalties are set forth in the statute**
- **High emotions, low consequences (most times)**
- **Public defender availability same standard as any other violations in municipal court – consequence of magnitude**

XI. Closing comments – Thoughts on the Certification Exam

- **Penalties for ordinances**
- **Standards/burden of proof**
- **Pre-emption issue**
- **Drunk driving with detention of individual and thwarting efforts to get an independent blood exam**
- **Statute of limitations**
- **Constitutional issue – vagueness, overbreadth**
 - **Curfews – not automatically unconstitutional, but must be specific enough so reasonable people know what the limitations are, cannot be very broad**
 - **Parental responsibility in curfew violations**
 - **where is such a case going to be heard? Family court? – curfews involve minors therefore not going to be heard in municipal court**
 - **matters of minors are never heard in municipal court unless provided for in the statute**
 - **NJSA 2A:4A-23 – definition of delinquency – ordinance violations are going to be heard in family court except for driving and smoking situations**

- **Ordinances have a presumption of constitutionality**
 - **Was process in enacting the ordinance done properly?
i.e. publications, technical way of adopting the ordinance – goes to illegality of ordinance**