

INTRODUCTION

State law changes in Alabama impact many provisions in the ordinance codes of Alabama cities and towns. This pamphlet is intended to assist city and town attorneys in the identification of provisions in ordinance codes that may require revision in light of state law. The information in this pamphlet is based upon the experience of the legal staff of Municipal Code Corporation in working with the ordinance codes of Alabama cities and towns.

This pamphlet is current through the 2017 Regular Session.

Not all provisions of this pamphlet will apply to your Code, nor does this pamphlet purport to include all state laws that may somehow affect the language of your Code.

The provisions of this pamphlet are intended to assist city and town attorneys and are not intended to be a substitute for the advice of counsel.

It is not the intent of Municipal Code Corporation in publishing this pamphlet to provide legal advice. An attorney admitted to practice in Alabama must be consulted as to the applicability of a given statute or case to a particular situation.

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GENERAL PROVISIONS

1. *Population acts.* Alabama Constitution amendment 389 provides that general laws of local application based upon population that was enacted before January 13, 1978, apply forever to the municipalities to which they applied on January 13, 1978, and no other, despite changes in population. See Official Recompilation of Constitution of Alabama, as amended, § 106.01.

2. *General law classification.* For purposes of general law and per Code of Ala. 1975, § 11-40-12, there are eight classes of municipalities based upon the population certified by the 1970 federal census, as follows:

- a. Class 1: All cities with a population of 300,000 inhabitants or more;
- b. Class 2: All cities with a population of not less than 175,000 and not more than 299,999 inhabitants;
- c. Class 3: All cities with a population of not less than 100,000 and not more than 174,999 inhabitants;
- d. Class 4: All cities with a population of not less than 50,000 and not more than 99,999 inhabitants;
- e. Class 5: All cities with a population of not less than 25,000 and not more than 49,999 inhabitants;
- f. Class 6: All cities with a population of not less than 12,000 and not more than 24,999 inhabitants;

- g. Class 7: All cities with a population of not less than 6,000 and not more than 11,999 inhabitants;
- h. Class 8: All cities and towns with a population of 5,999 inhabitants or less.

Any municipality incorporated after June 28, 1979, is placed in one of the above classes according to the population of the municipality at the time of its incorporation.

3. *Penalty for ordinance violations.* Subject to numerous exceptions and qualifications, the maximum fine that may be provided for an ordinance violation is \$500.00 and the maximum term of hard labor or imprisonment that may be provided for an ordinance violation is six months. See Code of Ala. 1975, § 11-45-9.

4. *Summons and complaint in lieu of arrest.* Ordinances may provide for issuance of a summons and complaint in lieu of arrest for violation of certain ordinances. See Code of Ala. 1975, § 11-45-9.1.

5. *Police jurisdiction.* The application of ordinances adopted after September 1, 2015 to the police jurisdiction is subject to certain notice requirements. In addition, application of ordinances to police jurisdictions created by certain annexations is restricted. See Code of Ala. 1975, § 11-40-10.

ADMINISTRATION

1. *Open meetings.* Open meeting (and notice requirements) are found in Code of Ala. 1975, § 36-25A-1 et seq.

2. *Service charge for bad checks.* Code of Ala. 1975, § 8-8-15 restricts the service charge for bad checks.

BUILDINGS AND BUILDING REGULATIONS

1. *Mobile homes.* Local regulation of mobile homes is restricted. See Code of Ala. 1975, §§ 24-5-13, 24-5-34.

2. *Auctioneers.* Political subdivisions may not license or tax auctioneers. See Code of Ala. 1975, § 34-4-6.

3. *Heating, air conditioning, and refrigeration contractors.* Local regulation of heating, air conditioning, and refrigeration contractors is restricted. See Code of Ala. 1975, § 34-31-28.

4. *Electrical contractors.* Local regulation of electrical contractors is restricted. See Code of Ala. 1975, § 34-36-13.

5. *Plumbers.* Local regulation of plumbers is restricted. See Code of Ala. 1975, § 34-37-8.

6. *Massage.* Local regulation of massage is restricted. See Code of Ala. 1975, § 34-43-19.

EMERGENCY MANAGEMENT AND EMERGENCY SERVICES

1. *Local emergency management organizations.* Political subdivisions must establish local emergency management organizations. See Code of Ala. 1975, § 31-9-10. Such statute also grants and restricts certain emergency powers.

2. *Ambulances.* Municipal regulation of ambulances must meet certain minimum standards. See Code of Ala. 1975, § 22-18-7.

HEALTH

1. *Smoking.* Local regulation of smoking must meet certain minimum standards. See Code of Ala. 1975, § 22-15A-10.

OFFENSES AND MISCELLANEOUS PROVISIONS

1. *Firearms*. Subject to certain exceptions, the entire field of regulation touching in any way upon firearms, ammunition, and firearm accessories is preempted to the state. See Code of Ala. 1975, § 13A-11-61.3.
2. *Blasting*. Local ordinances regulating blasting are preempted. See Code of Ala. 1975, § 8-17-251.
3. *Over-the-counter ephedrine or pseudoephedrine*. Local ordinances or regulations governing the sale or purchase of over-the-counter products containing ephedrine or pseudoephedrine are preempted. See Code of Ala. 1975, § 20-2-190.
4. *LP-gas room heaters*. Local regulation of LP-gas room heaters is preempted. See Code of Ala. 1975, § 9-17-125.

TAXATION

1. *Sales and use taxes*. Municipal sales and use taxes are subject to all exemptions from the state sales and use taxes. See Code of Ala. 1975, §§ 11-51-201, 11-51-203.
2. *Business license taxes*. Business licenses are governed by Code of Ala. 1975, § 11-51-90 et seq.
3. *Motor fuel taxes*. The validity of local motor fuel taxes is questionable given the repeal of Code of Ala. 1975, §§ 40-17-1 et seq. and 40-17-30 et seq. See also Code of Ala. 1975, § 40-17-359.
4. *Sale tax holidays*. Municipal sale tax holidays are authorized and restricted. See Code of Ala. 1975, § 40-23-213.

TRAFFIC

1. *Local regulations*. Local regulation of traffic is restricted. See Code of Ala. 1975, § 32-5-1.
2. *Electric personal assistive mobility devices*. Municipal regulation of electric personal assistive mobility devices on public highways is restricted. See Code of Ala. 1975, § 32-19-1.

ZONING

1. *Group homes*. Certain group homes for mentally retarded or mentally ill persons are considered a multi-family use for purposes of zoning ordinances. See Code of Ala. 1975, § 11-52-75.1.