

INTRODUCTION

State law changes in Arizona impact many provisions in the ordinance codes of Arizona municipalities. This pamphlet is intended to assist municipal 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 Arizona municipalities.

This pamphlet is current through the First Special Session of the Fifty-Third Legislature (2018), and through legislation effective April 12, 2018, of the Second Regular Session of the Fifty-Third Legislature (2018).

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 municipal 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 Arizona must be consulted as to the applicability of a given statute or case to a particular situation.

Copyright

This state law pamphlet is copyrighted by Municipal Code Corporation. Copyright is not claimed as to any part of the original work prepared by a state government officer or employee as part of that person's official duties. No part of this state law pamphlet may be copied, downloaded, stored in a retrieval system, further transmitted, or otherwise reproduced, stored, disseminated, transferred, or used, in any form for commercial purposes, without the express written consent of Municipal Code Corporation.

Prepared by

Roger D. Merriam, Senior Code Attorney

Copyrighted material

Municipal Code Corporation. 2018.

GENERAL PROVISIONS

1. *City powers generally.* Charter cities and general law cities also have the powers of incorporated towns found in A.R.S. title 9. See A.R.S. § 9-499.01.

ADMINISTRATION

1. *Conflicts of interest.* The provisions of A.R.S. title 38, ch. 3, art. 8 (A.R.S. § 38-501 et seq.) preempt and supersede ordinances and charters pertaining to conflicts of interest. See A.R.S. § 38-501.

2. *Notice of fees or taxes.* Subject to certain exceptions, special notice provisions are required in order for a municipality to levy or assess new taxes or fees or increase existing taxes or fees pursuant to statute on a business. See A.R.S. § 9-499.15.

ANIMALS

1. *Pet dealers.* Local regulation of pet dealers is restricted. See A.R.S. § 44-1799.11.

BUILDINGS AND BUILDING REGULATION

1. *Water conserving low-flow plumbing requirements.* Regulation of water conserving low-flow plumbing is restricted. See A.R.S. § 45-319.

2. *Relocation assistance.* Municipalities are required to adopt ordinances to implement requirements in A.R.S. title 11, ch. 7, art. 4 (A.R.S. § 11-961 et seq.) relative to relocation assistance to persons whose property is taken by eminent domain. See A.R.S. § 11-968.

EMERGENCY MANAGEMENT AND EMERGENCY SERVICES

1. *Alarm businesses.* Per A.R.S. § 32-113:
 - a. The power to license, register or certify an alarm business or alarm agent is preempted to the state.
 - b. A county, city or town shall not require an alarm business to provide any information regarding the alarm subscribers of the alarm business without a court order.

ENVIRONMENT

1. *Seed labeling.* Labeling of seeds is preempted to the state. See A.R.S. § 3-243.
2. *Fertilizer labeling.* Fertilizer labeling is preempted to the state. See A.R.S. § 3-263.
3. *Radiation.* Ordinances pertaining to sources of ionizing radiation must be consistent with A.R.S. title 30, ch. 4 (A.R.S. § 30-651 et seq.). See A.R.S. § 30-684.
4. *Particulate emissions produced by regulated agricultural activities.* Particulate emissions produced by regulated agricultural activities are preempted to the state. See A.R.S. § 49-457.
5. *Filling bodies of water.* Municipal regulation of the use of any water to fill or refill all or a portion of a body of water is restricted. See A.R.S. § 45-132.
6. *Pest management.* The regulation of pest management is preempted to the state. See A.R.S. § 3-3602.
7. *Releases from underground storage tanks.* Local regulation of the identification, prevention and remediation of releases of regulated substances from underground storage tanks is restricted. See A.R.S. § 49-1010.
8. *Pesticide control.* Pesticide control is preempted to the state. See A.R.S. § 3-377.

FIRE PREVENTION AND PROTECTION

1. *Approved fire apparatus access roads, fire apparatus access road extensions, approved routes or route extensions.* Municipal regulations concerning approved fire apparatus access roads, fire apparatus access road extensions, approved routes or route extensions are preempted to the state. See A.R.S. § 9-808.

LICENSES, TAXATION AND BUSINESS REGULATIONS

1. *Municipal taxation of food.* A municipal ordinance that seeks to impose or subject a producer, or a purchaser of a food product from a producer, to a tax, license or fee is void. See A.R.S. § 3-563.
2. *Excise taxation of bingo.* Excise taxation of bingo is preempted to the state. See A.R.S. § 5-412.
3. *Taxation of insurance.* Subject to exceptions, the field of imposing excise, privilege, franchise, income, license and similar taxes upon insurers and their general agents and agents as such and on the intangible property of insurers or such agents is preempted to the state. See A.R.S. § 20-226.
4. *Luxury taxation.* Subject to exceptions, the area of luxury taxation is preempted to the state. See A.R.S. § 42-3002.
5. *Indian reservation tobacco taxation.* The area of Indian reservation tobacco taxation is preempted to the state. See A.R.S. § 42-3307.
6. *Income taxation.* Subject to certain exceptions, the area of income taxation is preempted by the state. See A.R.S. § 43-201.
7. *Alcoholic beverages.*
 - a. Local regulation of alcoholic beverages is restricted. See A.R.S. § 4-224.
 - b. Municipal license fees or taxes on alcoholic beverage licenses in the nonuse status are prohibited. See A.R.S. § 4-203.05.
8. *Scrap metal dealers.*
 - a. Ordinances may not conflict with A.R.S. title 44, ch. 11, art. 3.1 (A.R.S. § 44-1641 et seq.). See A.R.S. § 44-1645.
 - b. Registration of scrap metal dealers is preempted to the state. See A.R.S. § 44-1648.
9. *Private commercial or industrial recycling services.* Municipalities may not prohibit or unreasonably restrain private commercial or industrial recycling services. A municipality shall prescribe rules for the delivery of recycling and solid waste management services for commercial, industrial and multifamily residential properties that promote availability of these services and competition in the delivery of these services. See A.R.S. § 49-746.
10. *Rent control.*
 - a. Subject to exceptions, the imposition of rent control on private residential housing units by cities and towns is preempted to the state. See A.R.S. § 33-1329.

- b. Subject to exceptions, imposition of rent control mobile home spaces by cities and towns is preempted to the state. See A.R.S. § 33-1416.

11. *Computer spyware and notices to consumers from computer software providers regarding information collection.* The regulation of computer spyware and notices to consumers from computer software providers regarding information collection is preempted to the state. See A.R.S. § 18-503.

12. *Computer security system breach notification.* The regulation of computer security breach notification is preempted to the state. See A.R.S. § 18-545.

13. *Jet fuel taxation.* Municipal taxation of jet fuel is restricted. See A.R.S. § 42-6014.

14. *Private employee scheduling.* Subject to minor exceptions, a city, town or county may not adopt an ordinance, resolution or other regulation that requires an employer to alter or adjust any employee scheduling unless the alteration or adjustment is required by state or federal law. See A.R.S. § 23-205.

15. *Private employee benefits.* The regulation of private employee benefits, including nonwage compensation, paid and unpaid leave and other absences, meal breaks and rest periods, is of statewide concern and is not subject to further regulation by a city, town or other political subdivision. See A.R.S. § 23-204.

16. *Retail business security requirements.* A municipality may not adopt an ordinance that requires a retail business to comply with specific security requirements, including the installation of security cameras or security lights, based on the size of the retail business, the type of the retail business or the number of calls the retail business made to law enforcement per year. See A.R.S. § 9-500.34.

17. *Trampoline courts.* Regulation of trampoline courts is preempted to the state. See A.R.S. § 37-1426.

18. *Retailer consumer incentive item regulation.* The regulation of consumer incentive items and their use, including their use in retail food establishment marketing, are not subject to regulation by a county, city, town or other political subdivision. See A.R.S. § 44-1380.

19. *Underground facilities.* Notification, location, marking, installation records, enforcement and remedies relating to underground facilities pursuant to A.R.S. §§ 40-360.22, 40-360.24, 40-360.25, 40-360.26, 40-360.28 and 40-360.30 are preempted to the state. See A.R.S. § 40-360.29.

20. *Vehicles for hire.* Subject to certain exceptions, the regulation and use of livery vehicles, taxis, transportation network company vehicles, transportation network companies and limousines is preempted to the state. See A.R.S. § 28-142.

21. *Minimum wage.* No political subdivision of this state may establish, mandate or otherwise require a minimum wage that exceeds the federal minimum wage prescribed in 29 U.S.C. § 206. See A.R.S. § 23-362. See also A.R.S. § 23-362 et seq.

OFFENSES AND MISCELLANEOUS PROVISIONS

1. *Weapons*. Municipal regulation of weapons is restricted. See A.R.S. §§ 12-781, 13-3108, 13-3120.
2. *Outdoor shooting range noise*. Local regulation of outdoor shooting range noise is preempted to the state. See A.R.S. § 17-602.
3. *Fireworks*. Local regulation of fireworks is restricted. See A.R.S. § 36-1606.
4. *Public intoxication*. Ordinances punishing public intoxication are prohibited. See A.R.S. § 36-2031.
5. *Cigarette ignition propensity safety standards*. Cigarette ignition propensity safety standards are preempted to the state. See A.R.S. § 37-1409.
6. *Medical marijuana*. Cities, towns and counties may enact reasonable zoning regulations that limit the use of land for registered nonprofit medical marijuana dispensaries to specified areas. See A.R.S. § 36-2806.01.
7. *Sales of ephedrine or pseudoephedrine products*. The regulation of the sale of ephedrine or pseudoephedrine products is preempted to the state. See A.R.S. § 32-1977.
8. *Remote stun guns*. The regulation of remote stun guns is preempted to the state. See A.R.S. § 13-3117.
9. *Sign walkers*. Local regulation of a person who wears, holds or balances a sign is restricted. See A.R.S. § 9-499.13.
10. *Shopping cart retrieval by local agencies*. The retrieval by local government agencies of shopping carts is governed exclusively by A.R.S. § 44-1799.33.
11. *Sex offender residence restrictions*. Local regulation of residency of certain sex offenders is restricted. See A.R.S. § 13-3727.
12. *Drop boxes*. Ordinances regulating drop boxes must not conflict with A.R.S. § 33-2501.

PLANNING AND DEVELOPMENT

1. *Zoning.* Zoning enabling laws (A.R.S. § 9-462.01 et seq.) are preemptive and must be followed by municipalities. *Levitz v. State*, 126 Ariz. 203, 613 P.2d 1259. (1980).
2. *Signs.* Regulation of signs generally is an exercise of zoning powers. See *City of Scottsdale v. Scottsdale Associated Merchants, Inc.*, 120 Ariz. 4, 583 P.2d 891. (1978).
3. *Airport zoning.* Airport zoning powers do not authorize municipalities to restrict or limit the length or width of an airstrip or runway used for the landing and takeoff of aircraft. See A.R.S. § 28-8479.

SOLID WASTE

1. *Auxiliary containers.* Local regulation of containers that are used for transporting merchandise or food to or from a business or multifamily housing property is restricted. See A.R.S. § 9-500.38.

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

1. *Underground facilities.* Notification, location, marking, installation records, enforcement and remedies relating to underground facilities pursuant to A.R.S. §§ 40-360.22, 40-360.24, 40-360.25, 40-360.26, 40-360.28 and 40-360.30 are preempted to the state. See A.R.S. § 40-360.29.

TRAFFIC AND VEHICLES

1. *Traffic violations.* Unless an ordinance provides for the imposition of a criminal penalty, a violation of the ordinance constitutes a civil traffic violation. See A.R.S. § 28-626.
2. *Photo traffic enforcement systems ('red-light cameras').* Photo traffic enforcement systems are regulated and restricted. See A.R.S. § 28-1201 et seq.
3. *Motor vehicle accident emergency response service fees.* The regulation of emergency response service fees for motor vehicle accidents or other incidents involving motor vehicles or investigations, cleanup or preparation of reports of accidents or incidents is a matter of statewide concern and not subject to further regulation by a county, city or town. See A.R.S. § 28-677 et seq.

UTILITIES

1. *Persons responsible for water, wastewater and solid waste collection rates.* The provisions of A.R.S. § 9-511.01 have been amended.

2. *Local enforcement of water pretreatment requirements.* Civil penalties are authorized for violation of ordinances necessary for implementing and enforcing the pretreatment requirements under the federal water pollution control act amendments of 1972. See A.R.S. § 49-391.

3. *Energy measuring and reporting.* Subject to certain exceptions, the regulation of measuring and reporting energy usage and consumption by an owner, operator or tenant of a business, commercial building or multifamily housing property is preempted to the state. See A.R.S. § 9-500.36.