

## INTRODUCTION

State law changes in Colorado impact many provisions in the ordinance codes of Colorado 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 Colorado municipalities.

This pamphlet is current through the First Regular and First Extraordinary Sessions of the 71st General Assembly (2017).

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

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## GENERAL PROVISIONS

1. *Home rule.*
  - a. Municipalities that are organized under a home-rule charter are free to legislate in matters of local concern and statutes that do not address issues of statewide concern are not binding upon the city. See Col. Const. art. XX, § 6.
  - b. In determining the respective authority of the General Assembly and home rule municipalities, the Colorado Supreme Court has recognized three broad categories of regulatory matters: (1) matters of local concern; (2) matters of statewide concern; and (3) matters of mixed state and local concern. See *Denver v. State*, 788 P.2d 764 (Col. 1990).
    - i. In a matter of a purely local concern, an ordinance of a home rule city supersedes a conflicting state statute. See *Voss v. Lundvall Brothers, Inc.*, 830 P.2d 1061 (Col. 1992).

- ii. In matters of statewide concern, the General Assembly may adopt legislation and home rule municipalities are without power to act unless authorized by the constitution or state statute. See *Denver v. State*, 788 P.2d 764 (Col. 1990).
- iii. In matters of mixed local and state concern, a home rule municipal ordinance may coexist with a state statute as long as there is no conflict between the ordinance and the statute, but, in the event of a conflict, the state statute supersedes the conflicting provisions of the ordinance. See *Voss v. Lundvall Brothers, Inc.*, 830 P.2d 1061 (Col. 1992)
- iv. For purposes of determining respective authority of General Assembly and home rule municipalities, determinations of whether particular matter is of local, state, or mixed concern are to be made on ad hoc basis, taking into consideration facts of each case and the following factors: whether there is need for statewide uniformity of regulation, whether municipal regulation has extraterritorial impact, whether subject matter is one traditionally governed by state or local government, and whether State Constitution specifically commits particular matter to state or local regulation. See *U.S. West Communications, Inc. v. City of Longmont*, 924 P.2d 1071 (Col. App. 1995), *cert. granted*, *aff'd* 948 P.2d 509.

2. *Penalty for ordinance violations.* Subject to certain exceptions, the maximum penalty for an ordinance violation is a fine of not more than \$2,650.00, imprisonment for not more than one year, or both such fine and imprisonment. Commencing January 1, 2014, and on January 1 of each year, the maximum fine is adjusted for inflation. See C.R.S. § 31-16-101.

### **ADMINISTRATION**

1. *Employee residency requirements.* Municipal employee residency requirements are prohibited. See C.R.S. § 8-2-120.

### **BUSINESSES**

1. *Issuance of business license to illegal alien.* Issuance of business licenses to illegal aliens is restricted. See C.R.S. § 31-15-501(2)(a).

2. *Rent controls.* Municipalities may not impose rent controls on private residential property. See C.R.S. § 38-12-301; *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30 (Col. 2000).

3. *Transportation network companies.* Transportation network companies are governed exclusively by C.R.S. title 40, art. 10.1, pt. 6 (C.R.S. § 40-10.1-601 et seq.). See C.R.S. § 40-10.1-603.

### **HEALTH**

1. *Clean indoor air.* Subject to certain exceptions, local regulation of indoor smoking may not be less stringent than the Colorado Clean Indoor Air Act (C.R.S. § 25-14-201 et seq.). See C.R.S. § 25-14-207.

2. *Plastic microbeads.* Local ordinances prohibiting producing, manufacturing, selling, and promoting personal care products that contain synthetic plastic microbeads are preempted. See C.R.S. § 25-5-1201.

## NUISANCES

1. *Liability for nuisances.* Ordinances may impose liability on the owner of real property for a nuisance committed on the property by a tenant in lawful possession of the property if certain conditions are met. See C.R.S. §§ 31-15-401(1)(c), 31-15-402.

## OFFENSES

1. *Firearms.* Local regulation of firearms is restricted. See C.R.S. § 29-11.7-101 et seq.
2. *Noise.*
  - a. The provisions of C.R.S. § 25-12-101 et seq., are minimum standards. See C.R.S. § 25-12-108.
  - b. Local noise restrictions have limited application to sport shooting ranges. See C.R.S. § 25-12-109.
3. *Frequency of religious meetings in homes.* Municipalities may not impose restrictions upon when or how often individuals may meet upon private residential property to pray, worship, or otherwise study or discuss issues relating to religious beliefs. See C.R.S. § 29-1-1201.

## PLANNING AND ZONING

1. *Nonconformities.* A non-home-rule municipality may not require a nonconforming property use that was lawful at the time of its inception to be terminated or eliminated by amortization. See C.R.S. § 38-1-101(3); *Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161 (S.C. Co. 2008).
2. *Land use approvals.* Conditions imposed upon land use approvals are subject to certain restrictions. See C.R.S. § 29-20-201 et seq.
3. *Adequate water supply for developments.* Development permits cannot be approved absent a showing that the water supply for the project will be adequate. See C.R.S. § 29-20-301 et seq.
4. *Development impact fees.* Development impact fees are subject to certain mandatory requirements. See C.R.S. § 29-20-101 et seq.
5. *Major electrical or natural gas facilities.* Local regulation of siting of major electrical or natural gas facilities is subject to certain minimum standards. See C.R.S. § 29-20-108.
6. *Group homes.*
  - a. Certain state-licensed group homes for persons with developmental disabilities or mental illness are a residential use of property. See C.R.S. § 31-23-301(4). See also C.R.S. § 31-23-303.
  - b. Certain group homes for elderly persons must be allowed in a zoning ordinance. See C.R.S. § 31-23-301(4).
7. *Manufactured homes.* Subject to certain exceptions, manufactured homes cannot be excluded from a municipality. See C.R.S. § 31-23-301(5).

8. *Planned unit developments.* Planned unit development ordinances must meet the minimum requirements of the Planned Unit Development Act of 1972 (C.R.S. § 24-67-101 et seq.). See C.R.S. § 31-23-313.

### **TAXATION**

1. *Contents of local sales tax ordinances.* The required contents of local sales tax ordinances have been altered. See C.R.S. § 29-2-105.

2. *Marijuana sales tax.* Statutory municipalities may levy a special sales tax on marijuana sales. See C.R.S. § 29-2-115.

### **TRAFFIC AND VEHICLES**

1. *Reserved parking for persons with disabilities.* Reserved parking for persons with disabilities is preempted to the state. See C.R.S. § 42-4-1208.

2. *Automated driving systems.* Municipalities shall not adopt or enforce a policy, rule, or ordinance that sets standards for an automated driving system that are different from the standards set for a human driver. See C.R.S. § 42-4-110.