

## INTRODUCTION

State law changes in Illinois impact many provisions in the ordinance codes of Illinois counties, cities and villages. This pamphlet is intended to assist attorneys for municipalities and counties 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 Illinois counties and municipalities.

This pamphlet is current through Public Act No. P.A. 99-906 of the 2016 Regular Session of the General Assembly.

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 attorneys for municipalities and counties 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 Illinois must be consulted as to the applicability of a given statute or case to a particular situation.

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Prepared by

Roger D. Merriam, Senior Code Attorney

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## GENERAL PROVISIONS

1. *Cities and villages; penalties for ordinance violations.*
  - a. No fine or penalty for violation of an ordinance, except civil penalties provided for failure to make returns or to pay any taxes levied by the municipality may exceed \$750.00 for any one violation. See 65 ILCS 5/1-2-1.
  - b. Imprisonment for violation of ordinances declared to be a misdemeanor cannot exceed six months for any one offense. See 65 ILCS 5/1-2-1.1.
  - c. A penalty imposed for violation of an ordinance may include, or consist of, a requirement that the defendant perform some reasonable public service work such as but not limited to the picking up of litter in public parks or along public highways or the maintenance of public facilities. See 65 ILCS 5/1-2-1, 65 ILCS 5/1-2-1.1.
2. *Home rule cities and villages; administrative adjudication of ordinance violations.*
  - a. Home rule cities and villages are authorized to provide by ordinance for a system of administrative adjudication of ordinance violations. See 65 ILCS 5/1-2.1-1 et seq.
  - b. Other systems of administrative adjudication are not prohibited. See 65 ILCS 5/1-2.1-10.
3. *Cities and villages; administrative adjudication of ordinances governing construction or nuisances.*

- a. Cities and villages are authorized to establish a code hearing department to expedite the prosecution and correction of ordinances that establish construction, plumbing, heating, electrical, fire prevention, sanitation or other health and safety standards that are applicable to structures or any ordinance that requires, after notice, the cutting of weeds, the removal of garbage and debris, the removal of inoperable motor vehicles, or the abatement of nuisances from private property. See 65 ILCS 5/11-31.1-1(a), 65 ILCS 5/11-31.1-2.
- b. The establishment of a code hearing department does not preclude a city or village from using other methods to enforce the provisions of its code. See 65 ILCS 5/11-31.1-3.
- 4. *Non-home rule cities and villages; administrative adjudication of other ordinances.*
  - a. Non-home rule cities and villages are authorized to establish a code hearing department to expedite the prosecution and correction of ordinances other than those that establish construction, plumbing, heating, electrical, fire prevention, sanitation or other health and safety standards that are applicable to structures or that requires, after notice, the cutting of weeds, the removal of garbage and debris, the removal of inoperable motor vehicles, or the abatement of nuisances from private property. See 65 ILCS 5/1-2.2-5, 65 ILCS 5/1-2.2-10.
  - b. Such act does not preclude the use of other methods to enforce ordinances. See 65 ILCS 5/1-2.2-15.
- 5. *Counties; penalties for ordinance violations.* Except for civil penalties provided for failure to make returns or to pay any taxes levied by the county, the maximum fine (in the absence of contrary law) for violation of a county ordinance is a fine not exceeding \$1,000.00. See 55 ILCS 5/5-1113.
- 6. *Counties; administrative adjudication of ordinances.*
  - a. Counties may establish by ordinance a code hearing unit for administrative adjudication of ordinances pertaining to animal control; the definition, identification, and abatement of public nuisances; the accumulation, disposal, and transportation of garbage, refuse, and other forms of solid waste; the construction and maintenance of buildings and structures; sanitation practices; or zoning. See 55 ILCS 5/5-41005, 55 ILCS 5/5-41010.
  - b. The establishment of such a unit does not preclude the county from using other methods to enforce ordinances. See 55 ILCS 5/5-41015.

## **ADMINISTRATION**

- 1. *Cities and villages; terms of office of elected municipal officials.* Except as otherwise provided by ordinance, terms of office of elected city or village officials (except as otherwise provided by ordinance) commence at the first regular or special meeting of the corporate authorities after receipt of the official election results from the county clerk. Such an ordinance may not fix the time for inauguration of newly elected officers later than the first regular or special meeting of the corporate authorities in the month of June following the election. See 65 ILCS 5/3.1-10-15.
- 2. *Counties, cities and villages; political activities of officer and employees and gifts.*
  - a. Counties, cities and villages are required to adopt ordinances or resolutions that regulate the political activities of officers and employees of the governmental entity and the soliciting and accepting of gifts by and the offering and making of gifts to officers and employees of the governmental entity. See 5 ILCS 430/70-5 et seq.
  - b. Such ordinances or resolutions must be at least as stringent as certain state statutes. See 5 ILCS 430/70-5.
- 3. *Counties, cities and villages; labor relations.* The Illinois Public Relations Act (5 ILCS 315/1 et seq.) preempts power from counties, cities and villages. See 5 ILCS 315/15.
- 4. *Counties, cities and villages; use of social security numbers.* County, city and village restrictions on use of social security numbers must be no less restrictive than the Identity Protection Act (5 ILCS 179/1 et seq.). See 5 ILCS 179/50.

## **ANIMALS**

1. *Counties, cities and villages; regulation of carrier, racing, hobby and show pigeons.* Regulation of carrier, racing, hobby and show pigeons by counties, cities and villages is restricted. See 510 ILCS 45/1 et seq.

## **BUILDINGS AND BUILDING REGULATIONS**

1. *Counties, cities and villages; plumbers.* Subject to certain exceptions, licensing of plumbers and registration of irrigation contractors and plumbing contractors are preempted to the state. See 225 ILCS 320/42.

2. *Counties, cities and villages; water well and pump installation contractors.* The Water Well and Pump Installation Contractor's License Act (225 ILCS 345/1 et seq.) preempts powers of counties, cities and villages. See 225 ILCS 345/29.

3. *Community association managers, supervising community association managers, and community association management firms.* Regulation and licensing of community association managers, supervising community association managers, and community association management firms are preempted to the state. See 225 ILCS 427/165.

## **BUSINESSES**

1. *Counties, cities and villages; local sales and use taxes.* Effective January 1, 1990, the Municipal Retailer's Occupation Tax, the Municipal Service Occupation Tax Act, the County Retailers' Occupation Tax Act and the County Service Occupation Tax Act were repealed. Subject to certain exceptions, non-home rule units lost the authority to levy such taxes. New authorizations for taxes were thereafter enacted. In addition, restrictions exist on the levy of such taxes by home rule units. See generally 55 ILCS 5/5-1006 et seq., 65 ILCS 5/8-11-1 et seq.

2. *Counties, cities and villages; massage therapy.* The regulation and licensing of massage therapy is preempted to the state. See 225 ILCS 57/55.

3. *Counties, cities and villages; private detective, private security, private alarm and similar businesses.* The regulation of the private detective, private security, private alarm, fingerprint vending, or locksmith business or their employees is preempted to the state. See 225 ILCS 447/50-25.

4. *Counties, cities and villages; rent control.* Subject to certain exceptions, counties, cities and villages may not enact, maintain, or enforce any ordinance or resolution that would have the effect of controlling the amount of rent charged for leasing private residential or commercial property. See 50 ILCS 825/5 et seq.

5. *Counties, cities and villages; automated teller machine security.* The regulation of customer safety at automated teller machines and the regulation and licensing of operators of automated teller machines, issuers of access devices, and persons who control an access area or defined parking area is preempted to the state. See 205 ILCS 695/40.

6. *Counties, cities and villages; funeral directors and embalmers.* Regulation or licensing of funeral directors, funeral director and embalmers, customer service employees, or any activities relating to the services of funeral directing and embalming is preempted to the state. See 225 ILCS 41/20-15.

7. *Counties, cities and villages; barbers, cosmetology, hair braiding, etc.* The regulation of barbers, cosmetologists and similar professions is preempted to the state. See 225 ILCS 410/1-3.

8. *Interior designers.* The regulation of interior designers is preempted to the state. See 225 ILCS 310/31.

## ELECTIONS

1. *Counties, cities and villages; temporary signs pertaining to elections.* The regulation of electioneering on polling place property on an election day, including but not limited to the placement of temporary signs, is preempted to the state. See 10 ILCS 5/17-29(c).

## ENVIRONMENT

1. *Counties, cities and villages; phosphorus in detergents.* The regulation of phosphorus in detergents is an exclusive power and function of the state. See 415 ILCS 92/5.

## FIRE PREVENTION AND PROTECTION

1. *Counties, cities and villages; underground petroleum storage tanks.* Local ordinances regulating underground petroleum storage tanks and associated piping must be identical to the rules and regulations of the Office of the State Fire Marshal. See 430 ILCS 15/2(2)(a).

2. *Counties, cities and villages; fire sprinkler systems.* State standards for the installation and repair of fire sprinkler systems are minimum standards. See 225 ILCS 317/45.

## HEALTH

1. *Counties, cities and villages; smoking in public.* County and municipal ordinances regulating smoking in public must be no less restrictive than the Smoke Free Illinois Act (410 ILCS 82/1 et seq.). See 410 ILCS 82/65.

2. *Counties, cities and villages; dairy farms, milk plants, etc.* Subject to certain exceptions 4, the regulation of dairy farms, milk plants, cleaning and sanitizing facilities, receiving stations, transfer stations, milk tank trucks, milk hauler-samplers, and certified pasteurizer sealers is preempted to the state. See 410 ILCS 635/19.

## OFFENSES

1. *Counties, cities and villages; public intoxication ordinances.* No county, city or village may adopt or enforce any ordinance that includes being intoxicated as the sole basis of the offense. See 20 ILCS 301/55-15.

2. *Counties, cities and villages; juvenile curfews.* Counties, cities and villages may adopt ordinances incorporating the substance of 720 ILCS 5/12C-60. or increasing the requirements thereof or otherwise not in conflict with same. See 720 ILCS 5/12C-60(f).

3. *Counties, cities and villages; caustic and noxious substances.* The regulation of the possession and carrying and purchase and acquisition of caustic and noxious substances is preempted to the state. See 720 ILCS 5/12-37, 720 ILCS 5/12-38.

4. *Counties, cities and villages; sale of targeted methamphetamine precursors and targeted packages.* The regulation of the sale of targeted methamphetamine precursors and targeted packages is preempted to the state. See 720 ILCS 648-55.

5. *Counties, cities and villages; tracking of methamphetamine precursors.* The regulation of tracking of methamphetamine precursors is preempted to the state. See 720 ILCS 649-40.

## STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

1. *Cities and villages; infrastructure maintenance fees.* The authorization of infrastructure maintenance fees is an exclusive power and function of the state. A city or village may not impose franchise or other fees upon or require other compensation from telecommunications retailers for use of the public way. See 35 ILCS 635/35.

## TRAFFIC AND VEHICLES

1. *Counties, cities and villages; felony DUI prosecutions preempted.* Counties, cities and villages may not enforce any ordinance that prohibits driving under the influence of alcohol, drugs, intoxicating compounds, or any combination thereof, if the offense charged would constitute a felony under Section 11-501 of the Illinois Vehicle Code. See 65 ILCS 5/1-2-1.2.

2. *Counties, cities and villages; automated traffic law enforcement systems (red light cameras).* The use of automated traffic law enforcement systems (red light cameras) by counties, cities and villages is restricted. See 625 ILCS 5/11-208.6.

3. *Counties; regulation of charitable solicitations.* County regulation of charitable organizations soliciting for charitable purposes, including solicitations of public roadways for passing motorists, is restricted. See 55 ILCS 5/5-1182.

## ZONING

1. *Cities and villages of less than 500,000 inhabitants; public hearing rules.* Municipalities of less than 500,000 inhabitants may authorize the zoning board of appeal or other boards that conduct zoning hearings to adopt rules of procedures governing such hearings. See 65 ILCS 5/11-13-22.

2. *Counties; cell towers.* Counties must give notice of public hearings on the location of certain telecommunications facilities by certified mail to owners of residential property located adjacent to property upon which such facilities are to be located. See 55 ILCS 5/5-12001.1.

3. *Cities and village; regulation of amateur radio antennas.* Municipal regulation of amateur radio antennas is restricted. See 65 ILCS 5/11-13-1.5.