

## INTRODUCTION

State law changes in Kansas impact many provisions in the ordinance codes of Kansas cities. 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 Kansas cities.

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

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## ADMINISTRATION

1. *Height restrictions for employees.* The power to impose height restrictions on the hiring or employment of municipal employees is restricted. See K.S.A. 44-1110.
2. *Claims against fire insurance.* The provisions of K.S.A. 40-3901 and 40-3902 have been expanded.

## ALCOHOLIC BEVERAGES

### 1. *Kansas Liquor Control Act.*

- a. No city may enact any ordinance or resolution which is in conflict with the provisions of the Kansas Liquor Control Act (K.S.A. ch. 41, arts. 1--11) and any such ordinance or resolution is null and void. See K.S.A. 41-208.
- b. The definitions in K.S.A. 41-102 were amended in 2017.

2. *Liquor sales by the drink.* No city shall enact any ordinance in conflict with or contrary to the provisions of K.S.A. ch. 41, art. 26 (K.S.A. 41-2601 et seq.) and any ordinance that is in conflict with or contrary to the provisions thereof is null and void. Minimum penalties in local ordinances cannot exceed the minimum penalty provided by such act for the same violation and maximum penalties in local ordinances cannot exceed the maximum penalty provided by such act for the same violation. See K.S.A. 41-2631.

3. *Kansas Cereal Malt Beverage Act.* Subject to certain exceptions, no city may enact any ordinance or resolution which is in conflict with the provisions of the Kansas Cereal Malt Beverage Act (K.S.A. 41-2701 et seq.) and any such ordinance is null and void. See K.S.A. 41-2728.

4. *Beer and Cereal Malt Beverage Keg Registration Act.* Any ordinance or resolution adopted by a city or county which supplements or is in conflict with or contrary to the provisions of the Beer and Cereal Malt Beverage Keg Registration Act (K.S.A. 41-2901--41-2906) is null and void. See K.S.A. 41-2902.

## BUILDINGS AND BUILDING REGULATIONS

1. *Amateur radio antennas.* City regulation of certain amateur radio antennas is restricted. See K.S.A. 12-16,126.

2. *Boilers.* A city may not adopt ordinances providing for the construction, installation, inspection, maintenance and repair of boilers. Any such ordinance is void and of no effect. See K.S.A. 44-929.

3. *Fire sprinkler requirements in certain residential dwellings.* Municipalities may not require fire sprinkler systems in certain residential dwellings. See K.S.A. 12-16,219.

## BUSINESSES

1. *Private detectives and private detective agencies.* The licensing and regulation of private detectives and private detective agencies is under the exclusive jurisdiction of the state attorney general. Local ordinances that provide for the licensing or regulation of private detectives and private detective agencies are void. See K.S.A. 75-7b18.

2. *Transportation network companies ("Uber").* Transportation network companies or drivers shall not be considered motor carriers, private motor carriers or public motor carriers of passengers as those terms are defined in 49 C.F.R. § 390.5, as in effect on July 1, 2017, or any later version as established in rules and regulations adopted by the state corporation commission and K.S.A. 66-1,108, and amendments thereto, nor determined to provide taxicab or for-hire vehicle service so long as such TNC or driver meets the requirements of K.S.A. 8-2701 et seq. In addition, a driver shall not be required to register the personal vehicle such driver uses for prearranged rides as a commercial or for-hire vehicle. See K.S.A. 8-2703.

## ENVIRONMENT

1. *Air quality conservation programs.* State approval is required for local air quality conservation programs. See K.S.A. 65-3016.

2. *Pesticides*. Subject to certain exceptions, regulation of pesticides is preempted to the state. See K.S.A. 2-2480.

3. *Fertilizer*. Subject to certain exceptions, regulation of fertilizer is preempted to the state. See K.S.A. 2-1235.

### **FIRE PREVENTION AND PROTECTION**

1. *Fire safety standards for cigarettes*. Local regulation of fire safety standards for cigarettes is restricted. See K.S.A. 31-612.

### **HEALTH**

1. *Lodging establishments*. Any provision of an ordinance prescribing safety and sanitation standards for lodging establishments that does not conform to the minimum standards promulgated by the state is null and void; ordinances may, however, establish standards that are more stringent than those established by the state. See K.S.A. 36-506.

### **OFFENSES**

1. *Public intoxication*. Subject to certain exceptions, local ordinances rendering public intoxication by alcohol in and of itself or being a common drunkard or being found in enumerated places in an intoxicated condition, an offense, a violation, or the subject of criminal penalties are prohibited. See K.S.A. 65-4059.

2. *Firearms and ammunition*. Subject to certain exceptions, cities may not adopt any ordinance governing the purchase, transfer, ownership, storage or transporting of firearms or ammunition, or any component or combination thereof. All such ordinances are null and void. See K.S.A. 12-16,124.

3. *Concealed handguns*. Subject to certain exceptions, cities may not regulate, restrict or prohibit the carrying of concealed handguns by persons licensed under the Personal and Family Protection Act (K.S.A. 75-7c01 et seq.). See K.S.A. 75-7c17.

4. *Sport shooting ranges*. Local regulation of sport shooting ranges is restricted. See K.S.A. 58-3221 et seq.

5. *Speed of trains*. Ordinances regulating the speed of railway engines and cars are null and void. See K.S.A. 12-1633, 14-434, 15-438.

6. *Accident response service fees*. Accident response service fees are restricted. See K.S.A. 12-16,129.

7. *Knives*. A municipality shall not enact or enforce any ordinance, resolution, regulation or tax relating to the transportation, possession, carrying, sale, transfer, purchase, gift, devise, licensing, registration or use of a knife or knife-making components. A municipality shall not enact or enforce any ordinance, resolution or regulation relating to the manufacture of a knife that is more restrictive than any such ordinance, resolution or regulation relating to the manufacture of any other commercial goods. See K.S.A. 12-16,134.

### **ZONING**

1. *Manufactured homes*. Zoning ordinances may not completely prohibit manufactured homes. Zoning ordinances may not exclude residential-design manufactured homes from single-family residential districts solely because they are manufactured homes. See K.S.A. 12-763.

2. *Group homes*. Group homes may not be prohibited in any zone or area where single-family dwellings are permitted, nor may group homes be subjected to regulations not applicable to other single-family dwellings in the same zone or area. See K.S.A. 12-736.