

## INTRODUCTION

State law changes in Louisiana impact many provisions in the ordinance codes of Louisiana municipalities and parishes. This pamphlet is intended to assist municipal attorneys and attorneys for parish governing authorities 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 Louisiana municipalities and parishes.

This pamphlet is current in the case of R.S. titles 9, 14, 15, 19, 32, 40, 44, 46, and 56 are current through the 2012 Regular Session. All other statutes cited are current through the 2011 First Extraordinary and Regular Sessions.

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 and parish 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 Louisiana 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. *Penalties for ordinance violations.*
  - a. Subject to certain exceptions, the maximum penalty that may be imposed for violation of a parish ordinance is a fine of \$500.00 and imprisonment of 30 days in the parish jail. See R.S. 33:1243.
  - b. The maximum penalty that may be imposed for violation of an ordinance of a municipality organized under the mayor and board of aldermen form of government is a fine of \$500.00 and imprisonment of 60 days. See R.S. 33:362.

## ALCOHOLIC BEVERAGES

1. *Permit fees.*
  - a. Holders of a local wholesaler's permit to engage in business as a wholesaler of beverages of high alcoholic content are not subject to a tax or license of any nature to do business in another municipality or parish unless the permittee maintains a regular branch of his wholesale business with the other municipality or parish. See R.S. 26:74.

- b. Holders of a local wholesaler's permit to engage in business as a wholesaler of beverages of low alcoholic content are not subject to a tax or license of any nature to do business in another municipality or parish unless the permittee maintains a regular branch of his wholesale business with the other municipality or parish. See R.S. 26:274.
2. *Keg registration.* The regulation of malt beverage keg registration is preempted to the state. See R.S. 26:306.

### **BUILDINGS AND BUILDING REGULATIONS**

- 1. *State Uniform Construction Code.* The provisions of R.S. title 40, ch. 8, pt. IV-A (R.S. 40:1725 et seq.) promulgate a state construction code, which code must be enforced by local governments. See generally R.S. 40:1730.23.
- 2. *Contractors.*
  - a. Local regulation of residential builders is restricted. See R.S. 37:2173.
  - b. Subject to certain exceptions, ordinances regulating firms and persons engaged in life safety and property protection contracting are preempted. See R.S. 40:1664.16.
  - c. Local regulatory and licensing authority over master plumbers and plumbing is restricted. See R.S. 37:1367.
  - d. Local regulatory and licensing authority over gas fitters and gas fitting is restricted. See R.S. 37:1361.
- 3. *Manufactured homes and manufactured housings.*
  - a. Local manufactured home installation standards are void. See R.S. 51:912.26.
  - b. Local manufactured housing construction and installation standards are void. See R.S. 51:911.41.
- 4. *Amateur radio antennas.* Regulation of amateur radio antennas is restricted. See R.S. 33:102.1.

### **BUSINESSES**

- 1. *Automated teller machine and night depositories.* The establishment of automated teller machine and night depository user safety standards is preempted to the state. See R.S. 6:1362.
- 2. *Cable and video service franchising.* Subject to certain exceptions, cable and video service franchising is preempted to the state. See R.S. 45:1362.
- 3. *Private contract security companies.* Ordinances relating to the licensing, training, or regulations of contract security companies other than the imposition of a bona fide business tax are preempted. See R.S. 37:3297.
- 4. *Massage.* Local regulation of massage is restricted. See R.S. 37:3567.
- 5. *Arborists.* Subject to certain exceptions, local regulation of arborists is restricted. See R.S. 3:3804.

### **ENVIRONMENT AND NATURAL RESOURCES**

- 1. *Fertilizer.* Subject to certain exceptions, the registration, sale, or application of fertilizer is preempted to the state. See R.S. 3:1423.
- 2. *Pesticides.* Subject to certain exceptions, the registration, sale, or application of fertilizer is preempted to the state. See R.S. 3:3224.
- 3. *Hazardous materials.* Local regulation of hazardous materials is restricted. See R.S. 30:2379.

4. *Ground water management.* Subject to certain exceptions, ground water management is preempted to the state. See R.S. 38:3097.1.

### **OFFENSES AND MISCELLANEOUS PROVISIONS**

1. *Felonious conduct.*

- a. Subject to certain enumerated exceptions, the provisions of R.S. 14:143 prohibit local ordinances defining as an offense conduct that is defined and punishable as a felony under state law. Such section restricts the penalty for violation of ordinances authorized under the section.
- b. Louisiana Constitution art. VI, § 9(A) prohibits a local government from defining and providing for the punishment of a felony.

2. *Firearms or ammunition.* Local regulation of the sale, purchase, possession, ownership, transfer, transportation, license, or registration of firearms, ammunition, or components of firearms or ammunition is restricted. See R.S. 40:1796. See also R.S. 33:120.

3. *Obscenity.* Ordinances regulating the sale, exhibition or distribution of material harmful of obscenity must mirror state law. See R.S. 14:106.

4. *Sale, exhibition, or distribution of material harmful to minors.* Ordinances regulating the sale, exhibition or distribution of material harmful to minors must mirror state law. See R.S. 14:91.11.

5. *Underground utilities and facilities damage prevention.* Local ordinances, rules and regulations must be consistent with the Louisiana Underground Utilities and Facilities Damage Prevention Law. See R.S. 40:1749.22.

6. *Sale and purchase of nonprescription products containing dextromethorphan, its salts or optical isomers, and salts of optical isomers.* Ordinances regulating the sale and purchase of nonprescription products containing dextromethorphan, its salts or optical isomers, and salts of optical isomers are preempted. See R.S. 40:962.1.2.

7. *Sport shooting ranges.* Local regulation of noise from sport shooting ranges is restricted. See R.S. 30:2055.1.

### **TAXATION**

1. *Local sales and use taxes.* Local sales and use taxes are regulated by the Uniform Local Sales Tax Code (R.S. 47:337.1 et seq.).

### **TRAFFIC AND VEHICLES**

1. *Possession of alcohol in motor vehicles.* Subject to a minor exception, ordinances regulating the possession of alcoholic beverages in motor vehicles are preempted to the state. See R.S. 32:300.

2. *Liability of registered owner of vehicle for parking violations.* Ordinances pertaining to the liability of the registered owner of a motor vehicle for parking violations are preempted. See R.S. 32:146.

3. *Cellular telephones.* The regulation of cellular telephone usage in motor vehicles is preempted to the state. See R.S. 33:31.