

INTRODUCTION

State law changes in Minnesota impact many provisions in the ordinance codes of Minnesota cities. This pamphlet is intended to assist city 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 Minnesota municipalities.

This pamphlet is current through laws of the 2017 Regular and First Special 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 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 Minnesota must be consulted as to the applicability of a given statute or case to a particular situation.

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GENERAL PROVISIONS

1. *Classes of cities.* Per Minn. Stats. § 410.01, for legislative purposes, there are four classes of cities, as follows:

- a. First class, being cities having a population in excess of 100,000.
- b. Second class, being cities having a population of more than 20,000 but not more than 100,000.
- c. Third class, being cities having a population of more than 10,000 but not more than 20,000.
- d. Fourth class, being cities having a population of not more than 10,000.

2. *Home rule charter cities and statutory cities.* There are two major kinds of cities (regardless of class)--home rule charter cities and statutory cities. Per Minn. Stats. § 410.33, home rule charter cities may apply general law on matters not specifically addressed in their charters unless otherwise provided by the charter or general law.

3. *Penalties for ordinance violations and state misdemeanors.*

- a. *State misdemeanors.* Subject to certain exceptions, state misdemeanors may be prosecuted by the city attorney and fine money for such violations are allocated to the city in a specified percentage. See Minn. Stats. §§ 484.841--484.90.
- b. *Maximum fine generally.* Any state law or city charter which limits the power of any statutory or home rule charter city to prescribe a maximum fine of \$700.00 or less for an ordinance

violation shall be deemed to provide that the statutory or home rule charter city has the power to prescribe a maximum fine of \$1,000.00. See Minn. Stats. § 609.034.

- c. *Statutory cities.* Per Minn. Stats. § 412.231, the maximum penalty for violation of an ordinance of a statutory city is a fine of \$1,000.00, imprisonment in a city or county jail for a period of 90 days, or both. In either case, the cost of prosecution may be added.
 - d. *Petty misdemeanor ordinance violations.* A state law or municipal charter that sets a limit of \$200.00 or less for an ordinance violation that is defined as a petty misdemeanor is considered to provide that city has the power to prescribe a maximum fine of \$300.00 for the petty misdemeanor violation. See Minn. Stats. § 609.0332.
4. *Notice of proposed ordinances.* If ordinances are posted on a city's website, proposed ordinances must also be posted on the website. See Minn. Stats. § 415.19.

ALCOHOLIC BEVERAGES

1. *Generally.* Alcoholic beverages are governed by Minn. Stats. ch. 340A (enacted in 1985, supplanting Minn. Stats. ch. 340). Most ordinances adopted prior to 1985 require substantial revision in light of Minn. Stats. ch. 340A.

2. *Additional regulations.* The provisions of Minn. Stats. § 340A.509 authorize cities to impose additional restrictions upon the sale and possession of alcoholic beverages.

3. *Use of term "nonintoxicating liquor."* No city may issue a 3.2 percent malt liquor license that includes the term "nonintoxicating liquor." See Minn. Stats. § 340A.411, subd. 3.

4. *Hours of sale.* Cities may limit the hours of sale of alcoholic beverages within the city; however, the restricted hours must apply equally to sales of 3.2 percent malt liquor and intoxicating liquor. City restriction of sale hours may be greater than, but not less than, the statutory restrictions. See Minn. Stats. § 340A.504, subd. 6.

5. *Public intoxication.* No person may be charged with or convicted of drunkenness or public drunkenness. See Minn. Stats. § 340A.902.

AMUSEMENTS AND ENTERTAINMENTS

1. *Adult businesses.*

a. The provisions of Minn. Stats. § 617.242 establish a statutory regulation scheme for adult businesses. It further provides that the statute is applicable only if a statutory city or home rule charter city does not enact an ordinance regulating adult entertainment establishments. Cities may adopt an ordinance or regulation that is consistent with such section, that supersedes or is in whole or in part more restrictive than such section, or that provides that this section does not apply in the city, and the city ordinance applies. If a city adopts an ordinance that only regulates a portion or facet of the operation of an adult entertainment establishment, such section applies to the remainder of the operation that is not regulated by the county, town, or city ordinance, unless the ordinance provides otherwise. The location restrictions in such statute were declared unconstitutional in *Northshor Experience, Inc. v. City of Duluth*, 442 F. Supp. 2d 713 (D. Minn., 2006). In addition, the court indicated that the remainder of the statute was probably unconstitutional. Such statute, however, was amended in 2015.

b. In *Northshor Experience, Inc. v. City of Duluth*, 442 F. Supp. 2d 713 (D. Minn., 2006), the court ruled that an ordinance imposing location (distance) restrictions for adult uses was in fact a zoning ordinance and held that the location restrictions were invalid because the ordinance was not adopted with zoning formalities.

ANIMALS

1. *Dangerous or potentially dangerous dogs.* A city may not adopt an ordinance regulating dangerous or potentially dangerous dogs based solely on the specific breed of the dog. See Minn. Stats. § 347.51, subd. 8.

BUSINESSES

1. *Denial of license to person convicted of a crime.* The provisions of Minn. Stats. ch. 364 restrict the power of a municipality to deny a license on the grounds that the applicant has been convicted of a crime.

2. *Pawnbrokers.* Ordinances regulating pawnbrokers must contain the minimum provisions of Minn. Stats. ch. 325J and may be more stringent than such chapter. See Minn. Stats. §§ 325J.02(a), 325J.13.

3. *Manufactured home park closings.* Ordinances relating to the relocation or buyout payments paid due to a change of use or closure of manufactured home communities are preempted. See Minn. Stats. § 327C.095, subd. 15.

4. *Scrap metal dealers.* The provisions of Minn. Stats. § 325E.21 preempt local ordinances on the same subject. See Minn. Stats. § 325E.21, subd. 10.

5. *Ambulances.* Local regulation of ambulances is restricted. See Minn. Stats. § 144E.16, subd. 5.

ENVIRONMENT

1. *Subsurface sewage treatment systems.* County ordinances regulating surface sewage treatment systems apply in all cities that have not adopted ordinances that comply with Minn. Stats. § 115.55 and are as strict as the applicable county ordinance. In addition, a local unit of government must make available to the public upon request a written list of any differences between its ordinances and rules adopted under Minn. Stats. § 115.55. See Minn. Stats. § 115.55, subd. 2.

2. *Approval of septic system.* The provisions of Minn. Stats. § 15.99 provide that, subject to certain exceptions, a city must approve, within 60 days, a written request relating to a septic system. Failure to do so constitutes approval of the request.

3. *Water well construction.* Subject to certain exceptions, water-supply, dewatering, or environmental notification and permit requirements are preempted to the state. See Minn. Stats. § 103I.205, subd. 1(c).

OFFENSES

1. *Lawful gambling.* Local regulation of lawful gambling is restricted and cities cannot provide prohibitions or more stringent regulations that do not apply to all forms of lawful gambling, except that paddlewheels may be prohibited. See Minn. Stats. § 349.213, subd. 1.

2. *Firearms and ammunition.* The power of cities to adopt ordinances, orders or regulations that regulate firearms, ammunition or components is restricted. See Minn. Stats. § 471.633 et seq.

3. *Juvenile curfew ordinances.* Under Minn. Stats. § 145A.05, subs. 7a and 9, a city ordinance cannot conflict with or be less restrictive than a countywide curfew ordinance.

4. *Public intoxication.* No person may be charged with or convicted of drunkenness or public drunkenness. See Minn. Stats. § 340A.902.

5. *Ephedrine or pseudoephedrine.* Ordinances or regulations governing the sale by a business establishment of over-the-counter products containing ephedrine or pseudoephedrine. See Minn. Stats. § 152.02, subd. 6(n).

TRAFFIC AND VEHICLES

1. *Generally.* Cities may not enact or enforce provisions in conflict with Minn. Stats. ch. 169, unless expressly authorized. See Minn. Stats. § 169.022. When any ordinance regulating traffic covers the same subject for which a penalty is provided for in Minn. Stats. ch. 169, then the penalty provided for violation of the ordinance must be identical with the penalty provided for in Minn. Stats. ch. 169 for the same offense. See Minn. Stats. § 169.022. The provisions of Minn. Stats. § 169.04 preserve authority for municipalities to regulate certain matters.
2. *Off-highway motorcycles.* City regulation of the operation of off-road motorcycles on public lands, waters, and property under its jurisdiction is restricted. See Minn. Stats. § 84.795, subd. 8.
3. *Off-road vehicles.* City regulation of the operation of off-road vehicles on public lands, waters, and property under its jurisdiction is restricted. See Minn. Stats. § 84.804, subd. 6.
4. *Snowmobiles.* City regulation of the operation of snowmobiles on public lands, waters, and property under its jurisdiction is restricted. See Minn. Stats. § 84.87, subd. 3.
5. *All-terrain vehicles.* City regulation of the operation of all-terrain vehicles is restricted. See Minn. Stats. § 84.928, subd. 6.
6. *Scrapped, dismantled, or destroyed vehicles.* Ordinances regulating scrapped, dismantled, or destroyed vehicles are preempted. See Minn. Stats. § 168A.1501, subd. 14.

ZONING

1. *Provisions subject to zoning formalities.* In *Northshor Experience, Inc. v. City of Duluth*, 442 F. Supp. 2d 713 (D. Minn., 2006), the court ruled that an ordinance imposing location (distance) restrictions for adult uses was in fact a zoning ordinance and held that the location restrictions were invalid because the ordinance was not adopted with zoning formalities.
2. *Deadlines for approvals.* The provisions of Minn. Stats. § 15.99 provide that, subject to certain exceptions, a city must approve, within 60 days, a written request relating to a zoning. Failure to do so constitutes approval of the request.
3. *Ordinances rezoning property from residential to commercial or industrial.* The adoption or amendment of any portion of a zoning ordinance that changes the zoning classification property from residential to either commercial or industrial requires a two-thirds majority vote of all members of the governing body. See Minn. Stats. § 462.357, subd. 2(b).
4. *Preexisting nonconforming uses.*
 - a. *Generally.* Ordinances providing for amortization of termination of nonconforming uses are restricted. See Minn. Stats. § 462.357, subds. 1c--1e.
 - b. *Shoreland resorts.* Additional grandfathering rules exist for certain shoreland commercial establishments. See Minn. Stats. § 103F.227.
5. *Manufactured homes and manufactured home parks.* Zoning restrictions on manufactured homes and manufactured home parks are restricted. See Minn. Stats. § 462.357, subds. 1a, 1b.
6. *Day care centers and group homes.* Zoning of certain day care centers and group homes is restricted. See Minn. Stats. § 462.357, subds. 7, 8.
7. *Variances.* A condition imposed in the granting of a variance must be directly related to and must bear a rough proportionality to the impact created by the variance. In addition, provisions relative to variances have been significantly reworded. See Minn. Stats. § 462.357, subd. 6(2).