

## **NORTH CAROLINA MUNICIPAL AND COUNTY LAWS**

State laws in North Carolina impact many provisions in the ordinance codes of North Carolina municipalities and counties. This pamphlet is intended to assist city, town and county 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 North Carolina municipalities.

This pamphlet is current through the S.L. 2019-238 of the 2019 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 municipal and county 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 North Carolina must be consulted as to the applicability of a given statute or case to a particular situation.

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## GENERAL PROVISIONS

1. *General law vs. charter or local act.*
  - a. *Municipalities.* The resolution of conflicts and contradictions between municipal charters and general law is found in G.S. 160A-3.
  - b. *Counties.* The resolution of conflicts and contradictions between local acts and G.S. ch. 153A is provided for in G.S. 153A-3.
  
2. *Preemption of certain municipal ordinances.* Per G.S. 160A-174, municipal ordinances may not punish that which is punished by state or federal law, i.e., the elements of an offense defined by ordinance cannot be identical to the elements of an offense defined by state or federal law. The fact that a state or federal law, standing alone, makes a given act, omission, or condition unlawful does not preclude ordinances requiring a higher standard of conduct.
  
3. *Penalty for violation of ordinances.*
  - a. Unless the governing body otherwise provides, a violation of an ordinance is a misdemeanor or infraction as provided by G.S. 14-4. See G.S. 153A-123 and 160A-175.
  - b. An ordinance violation is a Class 3 misdemeanor punishable by a fine of not more than \$500.00, provided that no fine shall exceed \$50.00 unless the ordinance expressly so states. See G.S. 14-4.
  - c. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4. See G.S. 153A-123 and 160A-175.
  - d. An ordinance may provide that a violation shall subject the offender to a civil penalty to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for a violation of the ordinance. See G.S. 153A-123 and 160A-175.
  - e. Violations of ordinances regulating the operation or parking of vehicles are infractions, punishable by a penalty of not more than \$50.00. See G.S. 14-4.

## ALCOHOLIC BEVERAGES

1. *Local ordinances restricted.* G.S. 18B-100 prohibits local ordinances establishing different rules on the manufacture, sale, purchase, transportation, possession, consumption or other use of alcoholic beverages or the requirement of additional permits or fees, except as otherwise provided in G.S. ch. 18B. See also G.S. 18B-300(c).
  
2. *Public intoxication.* No person may be prosecuted solely for being intoxicated in a public place. See G.S. 14-447.

## ANIMALS

1. *Beehives.* Local regulation of the ownership or possession of beehives is restricted. See G.S. 106-645.

## BUILDINGS AND BUILDING REGULATIONS

1. *Condominiums.* A building code or other real estate use ordinance may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a substantially similar development under a different form of ownership. See G.S. 47C-1-106.
2. *Planned communities.* A building code or other real estate use ordinance may not prohibit a planned community or impose any requirement upon a planned community which it would not impose upon a substantially similar development under a different form of ownership or administration. See G.S. 47F-1-106.
3. *Condemnation of unsafe buildings by counties.* A county ordinance may expand provisions applicable to nonresidential buildings to residential buildings. See G.S. 153A-366. See also G.S. 153A-372.
4. *Regular, routine inspections of buildings or structures.* The power to require or perform additional building inspections not required by the state building code is restricted. See G.S. 153A-352 and 160A-412.

## BUSINESSES

1. *Close-out sales.* Municipal licensing of close-out sales was eliminated by the repeal of G.S. 66-77.
2. *Transportation network companies ("Uber").* Subject to certain exceptions, counties, municipalities, airport operators and other governmental entities may not regulate transportation network companies. See G.S. 20-280.10.
3. *Regulation and licensing of businesses.* Subject to certain exceptions, cities may regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience. See G.S. 160A-194.
4. *Private employment practices or public accommodations.* Local governments may not enact or amend an ordinance regulating private employment practices or regulating public accommodations. See S.L. 2017-4, § 3. This provision expires on December 1, 2020, pursuant to S.L. 2017-4, § 4. See G.S. 143-761.
5. *Sale and purchase of metals.* Local regulation of secondary metals recyclers or regulated metals property is restricted. See G.S. 66-428.

## EMERGENCY MANAGEMENT AND EMERGENCY SERVICES

1. *Local declaration of emergency.* G.S. 166A-19.3 has been amended to allow closing roads and public vehicular areas during a declared emergency.

## ENVIRONMENT

1. *Hazardous waste facilities.* Local regulation of hazardous waste facilities is limited. See G.S. 130A-293.
2. *Riparian buffers.* Local government regulation of riparian buffers is restricted. See G.S. 143-214.23A.
3. *Oil and gas exploration, development, and production activities.* Local ordinances regulating oil and gas exploration, development, and production activities are restricted. See G.S. 113-415.1.
4. *Municipalities; off-site wastewater systems.* A municipality shall not prohibit or regulate by ordinance or enforce an existing ordinance regulating the use of off-site wastewater systems or other systems approved by the state when the proposed system meets the specific conditions of the approval. See G.S. 130A-335.

### **MANUFACTURED HOMES AND TRAILERS**

1. *Zoning for manufactured homes.* Per G.S. 153A-341.1 and 160A-383.1:
  - a. Municipalities and counties may not adopt or enforce zoning regulations or other provisions which have the effect of excluding manufactured homes for the entire zoning jurisdiction.
  - b. Municipalities and counties may, however, adopt and enforce appearance and dimensional criteria for manufactured homes. The criteria must be adopted by ordinance.
  - c. Manufactured home overlay districts are authorized.

### **NUISANCES**

1. *Agricultural and forestry operations.* The power of local governments to make the operation of agricultural or forestry operations a nuisance is restricted. See G.S. 106-701.

### **OFFENSES AND MISCELLANEOUS PROVISIONS**

1. *Public intoxication.* No person may be prosecuted solely for being intoxicated in a public place. See G.S. 14-447.
2. *Firearms.* Subject to certain exceptions, local governments may not regulate firearms. See G.S. 14-409.40.
3. *Access to multiple occupancy restrooms.* Political subdivisions of the state are preempted from regulation of access to multiple occupancy restrooms, showers, or changing facilities, except in accordance with an act of the General Assembly. See G.S. 143-761.
4. *Underground Utility Safety and Damage Prevention Act.* The Underground Utility Safety and Damage Prevention Act restricts powers of municipalities and counties. See G.S. 87-118.
5. *Pseudoephedrine.* Local ordinances or regulations governing the sale by a retailer of over-the-counter products containing pseudoephedrine are preempted. See G.S. 90-113.60.
6. *Lottery.* Local regulation of the state lottery is prohibited. See G.S. 18C-170.

### **SOLID WASTE**

1. *White goods.* Local ordinances pertaining to discarded white goods are restricted. See G.S. 130A-309.86.
2. *Scrap tires.* Local regulation of scrap tires is restricted. See G.S. 130A-309.61.

### **SUBDIVISIONS**

1. *Condominiums.* A subdivision ordinance may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a substantially similar development under a different form of ownership. See G.S. 47C-1-106.
2. *Planned communities.* A subdivision ordinance may not prohibit a planned community or impose any requirement upon a planned community which it would not impose upon a substantially similar development under a different form of ownership or administration. See G.S. 47F-1-106.
3. *Performance guarantees.* The provisions of G.S. 160A-372(g) and 153A-331(g) have been amended.
4. *Requiring underground power lines.* The authority to require undergrounding of power lines is restricted. See G.S. 153A-331(f1), 160A-372(f1).
5. *Square footage of structures.* A subdivision ordinance may not set a minimum square footage of any structure subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings. See G.S. 160A-372(f2), 153A-331(f2).

### **TRAFFIC AND VEHICLES**

1. *Automatic license plate reader systems.* The use of automatic license plate reader systems is restricted. See G.S. 20-183.30 et seq.
2. *Autonomous vehicles or vehicles equipped with an automated driving system.* No local government shall enact any local law or ordinance related to the regulation or operation of fully autonomous vehicles or vehicles equipped with an automated driving system, other than regulation specifically authorized in G.S. chs. 153A and 160A that is not specifically related to those types of motor vehicles. See G.S. 20-401.
3. *Boating safety education.* Ordinances or rules pertaining to boating safety education are preempted. See G.S. 75A-16.2.

### **UTILITIES**

1. *Water and sewer system development fees.* G.S. 162A-200 et seq., provides for water and sewer development fees.

### **ZONING**

1. *Definitions of the terms "dwelling unit," "bedroom," and "sleeping unit."* Counties and municipalities may not adopt zoning definitions of the terms "dwelling unit," "bedroom," and "sleeping unit" that are more expansive than any definitions of the same in another statute or in a rule adopted by a state agency. See G.S. 153A-346 and 160A-390.
2. *Fence wraps displaying signage.* Local government zoning regulation of fence wraps

displaying signage is restricted. See G.S. 153A-340 and 160A-381.

3. *Zoning for manufactured homes.* Per G.S. 153A-341.1 and 160A-383.1:

- a. Municipalities and counties may not adopt or enforce zoning regulations or other provisions which have the effect of excluding manufactured homes for the entire zoning jurisdiction.
- b. Municipalities and counties may, however, adopt and enforce appearance and dimensional criteria for manufactured homes. The criteria must be adopted by ordinance.
- c. Manufactured home overlay districts are authorized.

4. *Condominiums.* A zoning ordinance may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a substantially similar development under a different form of ownership. See G.S. 47C-1-106.

5. *Planned communities.* A zoning ordinance may not prohibit a planned community or impose any requirement upon a planned community which it would not impose upon a substantially similar development under a different form of ownership or administration. See G.S. 47F-1-106.

6. *Square footage of structures.* A zoning ordinance may not set a minimum square footage of any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings. See G.S. 153A-340(a1), 160A-381(a)(1).