

NORTH CAROLINA MUNICIPAL AND COUNTY LAWS

State law changes 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 Chapters 93, 95 to 99 and 101 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 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.

COPYRIGHT

This state law pamphlet is copyrighted by Municipal Code Corporation. Copyright is not claimed as to any part of the original work prepared by a state government officer or employee as part of that person's official duties. No part of this state law pamphlet may be copied, downloaded, stored in a retrieval system, further transmitted, or otherwise reproduced, stored, disseminated, transferred, or used, in any form for commercial purposes, without the express written consent of Municipal Code Corporation.

Prepared by
Roger D. Merriam, Senior Code Attorney
Copyrighted material
Municipal Code Corporation. 2016.

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, violation of ordinance is a misdemeanor or infraction as provided by G.S. 14-4. See G.S. 153A-123, 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, 160A-175.

d. An ordinance may provide that 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 violation of the ordinance. See G.S. 153A-123, 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 rules on the manufacture, sale, purchase, transportation, possession, consumption or other use of alcoholic beverages or requiring additional permits or fees, except as otherwise provided in G.S. ch. 18B.

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.
2. *Limitations on standards of care for farm animals*. No municipal or county ordinance may regulate standards of care for farm animals. See G.S. 153A-145.4, 160A-203.1.

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.

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)*. Counties, municipalities, airport operators and other governmental entities may not regulate transportation network companies. See G.S. 20-280.10.

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 invalid. See G.S. 113-415.1.

MANUFACTURED HOMES AND TRAILERS

1. *Zoning for manufactured homes*. Per G.S. 153A-341, 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 government to make the operation of agricultural or forestry operations 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.

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.

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.

ZONING

1. *Municipal zoning amendments.* Municipal zoning amendment procedures were recently amended. See G.S. 160A-385.
2. *Definitions of dwelling unit, bedroom, or sleeping unit dwelling unit, bedroom, or sleeping unit.* Counties and municipalities may not adopt zoning definitions of dwelling unit, bedroom, or 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, 160A-390.
3. *Fence wraps displaying signage.* Local government zoning regulation of fence wraps displaying signage is restricted. See G.S. 153A-340, 160A-381.
4. *Zoning for manufactured homes.* Per G.S. 153A-341, 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.

5. *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.

6. *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.