

INTRODUCTION

State laws in New Mexico impact many provisions in the ordinance codes of New Mexico counties and municipalities. This publication is intended to assist county and municipal attorneys in the identification of provisions in ordinance codes that may require revision in light of state law. The information in this publication is based upon the experience of the legal staff of Municipal Code Corporation in working with the ordinance codes of New Mexico counties and municipalities.

This publication is current through the Second Regular Session of the 53rd Legislature (2018).

Not all provisions of this publication will apply to your Code, nor does this publication purport to include all state laws that may somehow affect the language of your Code.

The provisions of this publication are intended to assist local government 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 publication to provide legal advice. An attorney admitted to practice in New Mexico must be consulted as to the applicability of a given statute or case to a particular situation.

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GENERAL PROVISIONS

1. *Municipalities; penalties for ordinance violations.* Subject to certain exceptions, the maximum penalty that may be authorized for an ordinance violation is a fine of not more than \$500.00 and/or imprisonment for not more than 90 days. See NMSA 1978, § 3-17-1.

2. *Counties; penalties for ordinance violations.* Subject to certain exceptions, the maximum penalty that may be authorized for an ordinance violation is a fine of not more than \$300.00 and/or imprisonment for not more than 90 days. See NMSA 1978, § 4-37-3.

ANIMALS

1. *Service animals.* A person with a disability has the right to be accompanied by a qualified assistance animal in public places. See NMSA 1978, §§ 28-7-3, 28-11-1.1 et seq.

BUILDINGS AND BUILDING REGULATIONS

1. *Solar collectors.* Local restrictions on installations of solar collectors are limited. See NMSA 1978, § 3-18-32.

2. *Municipalities; contractor bonds.* A municipality cannot require a person licensed under the Construction Industries Licensing Act (NMSA 1978, § 60-13-1 et seq.) to obtain as a condition of doing business as a licensed contractor any additional license bond as proof of responsibility if the person has met state requirements as to same. See NMSA 1978, § 60-13-51.

3. *Condominiums.* Local ordinances regulating condominiums are restricted. See NMSA 1978, § 47-7A-6.

BUSINESSES

1. *Private investigators, street patrols, etc.* Local ordinances pertaining to street patrol special officers or persons licensed or registered under the Private Investigations Act (NMSA 1978, § 61-27B-1 et seq.) must be consistent with such Act. See NMSA 1978, § 61-27B-29.
2. *Insurance.* Subject to certain exceptions, the field of taxation of insurers, nonprofit health care plans, health maintenance organizations, prepaid dental plans, prearranged funeral plans and insurance producers as such is preempted to the state. See NMSA 1978, § 59A-6-6.

FIRE PREVENTION AND PROTECTION

1. *Cigarette ignition.* The Fire-Safer Cigarette and Firefighter Protection Act (NMSA 1978, § 57-2B-1 et seq.) preempts local ordinances. See NMSA 1978, § 57-2B-12.

HEALTH

1. *Smoking in public.* County and municipal ordinances regulating smoking in public must be inclusive of all minimum standards and provisions for smokefree areas within the Dee Johnson Clean Indoor Air Act (NMSA 1978, § 24-16-1 et seq.). See NMSA 1978, § 24-16-20.

NUISANCES

1. *Shooting ranges.* The use or operation of a sport shooting range cannot be enjoined as a nuisance under certain circumstances. See NMSA 1978, § 17-8-4.
2. *Farms.* Farming operations cannot be a nuisance under certain circumstances. See NMSA 1978, § 47-9-3.

OFFENSES

1. *Public intoxication ordinances.* Subject to certain exceptions, counties and municipalities may not adopt or enforce ordinances that include drinking alcohol, being a common drunkard or being found in an intoxicated condition as one of the elements giving rise to a criminal or civil penalty or sanction. See NMSA 1978, § 43-2-4.
2. *Sex offender registration and notification.* The field of sex offender registration and notification is preempted to the state, and local requirements on such subjects are void or prohibited. See NMSA 1978, § 29-11A-9.

TAXATION

1. *Taxation of insurers, nonprofit health care plans, health maintenance organizations, prepaid dental plans, pre-arranged funeral plans and insurance producers.* Subject to certain exceptions, the field of taxation of insurers, nonprofit health care plans, health maintenance organizations, prepaid dental plans, pre-arranged funeral plans and insurance producers as such, is preempted to the state. See NMSA 1978, § 59A-6-6.

TRAFFIC AND VEHICLES

1. *Golf carts.* Ordinances restricting golf carts are restricted and must meet certain minimum requirements. See NMSA 1978, § 66-7-9.
2. *Municipalities; penalties for violation of certain traffic restrictions.* Penalties for violation of certain municipal traffic ordinances are restricted. See NMSA 1978, § 3-18-17.
3. *Transportation network companies (Uber).* Subject to certain exceptions, no municipality may impose a tax on or require a license for a transportation network company, a transportation network company driver or a vehicle used by a transportation network company driver where a tax or license relates to providing pre-arranged rides or subjects a transportation network company to the

municipality's or other local entity's rate, tax, license, entry, operational or other requirements, except for generally applicable business licenses or taxes. See NMSA 1978, § 65-7-18.

ZONING

1. *Manufactured housing.* Zoning of manufactured housing is restricted. See NMSA 1978, § 3-21A-3.

2. *Community residences for persons with a mental or developmental disability.* All state-licensed or state-operated community residences for persons with mental or developmental disabilities that serve ten or fewer persons may be considered a residential use of property for purposes of zoning and may be a permitted use in all districts in which residential uses are permitted generally, including particularly residential zones for single-family dwellings. See NMSA 1978, § 3-21-1.