

INTRODUCTION

State law changes in Oklahoma impact many provisions in the ordinance codes of Oklahoma municipalities. This pamphlet is intended to assist municipal 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 Oklahoma municipalities.

This pamphlet is current through the acts of the First Regular Session and the First Special Session of the 56th Legislature, effective through November 17, 2017.

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 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 Oklahoma must be consulted as to the applicability of a given statute or case to a particular situation.

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GENERAL PROVISIONS

1. *Penalty for ordinance violations.* The maximum penalty for ordinance violations has been altered. See 11 O.S. § 14-111(C).

2. *Felonies.* Ordinances may not punish that which is a felony under state law. See 11 O.S. § 14-111. See also Ok. Const. art. VII, § 1.

ADMINISTRATION

1. *Purchases by reverse auctions.* Municipal purchases of goods and supplies by reverse auctions are authorized and restricted. See 11 O.S. §§ 17-115, 17-115.1.

2. *Fair and Open Competition in Governmental Construction Act.* The provisions of 61 O.S. § 81 et seq. restrict certain contracts.

ALCOHOLIC BEVERAGES

1. *Sale, barter or gift of low point beer to persons under 21.* Ordinances prohibiting the sale, barter or gift of low point beer to persons under 21 must be identical to 37 O.S. § 241.

2. *Consumption or possession with intent to consume intoxicating beverages.* Ordinances prohibiting consumption or possession with intent to consume intoxicating beverages must be identical to 37 O.S. § 246.

BUILDINGS AND BUILDING REGULATIONS

1. *Minimum standards.* Local building codes must contain higher standards and requirements than the state building codes promulgated pursuant to the Oklahoma Uniform Building Code Commission Act. See 59 O.S. § 1000.29.
2. *Certificate of insurance requirement for residential building permit.* A certificate of insurance must be obtained from the contractor prior to issuance of residential building permit. See 11 O.S. § 43-109.2.
3. *Real property registration.* Municipalities may not require registration of real property. See 11 O.S. § 22-110.1.

BUSINESSES

1. *Public auctioneers.* Local licensing of public auctioneers is restricted. See 59 O.S. § 991.
2. *Precious metal and gem dealers.* Local licensing and regulation of precious metal and gem dealers is restricted. See 59 O.S. § 1527.
3. *Transportation network companies ('Uber').* The regulation, licensing or permitting of transportation network companies for the provisions of prearranged rides is within the exclusive jurisdiction of the Oklahoma Corporation Commission as set forth in the Oklahoma Transportation Network Company Services Act and any rules promulgated by the commission consistent with the Act. No political subdivision of the state may impose a tax on, or require a license for, a TNC or a TNC driver for the provision of prearranged rides or subject a TNC to the political subdivision's rate requirement, entry requirement, operational requirement or other requirements. See 47 O.S. § 1030.

HEALTH

1. *Smoking in public places.* Subject to certain exceptions, ordinances regulating smoking in public place must be identical to state law. See 63 O.S. § 1-1527.

NUISANCES

1. *Cleaning and mowing of property.* Ordinances providing for cleaning and mowing of property are restricted. See 11 O.S. § 22-111.
2. *Dilapidated buildings.* Ordinances providing for the removal of dilapidated buildings are restricted. See 11 O.S. § 22-112 et seq.

OFFENSES AND MISCELLANEOUS PROVISIONS

1. *Firearms and knives.* Subject to certain exceptions, the entire field of legislation touching in any way firearms, knives, components, ammunition, and supplies is preempted to the complete exclusion of any order, ordinance, or regulation by any municipality. See 21 O.S. §§ 1289.24, 1321.4.
2. *Fireworks.* Municipal ordinances regulating fireworks are restricted. See 11 O.S. § 22-110(B).
3. *Cigarette combustibility.* The Fire Safety Standard and Firefighter Protection Act preempts local authority. See 74 O.S. § 326.11.
4. *Seeds.* The regulation and enforcement of the registration, labeling, sale, storage, transportation, distribution, notification of use, and use of seeds is preempted to the state. See 2 O.S. § 8-26.1.
5. *Fertilizer.* The regulation and enforcement of the registration, labeling, sale, storage, transportation, distribution, notification of use, and agricultural use of fertilizer is preempted to the state. See 2 O.S. § 8-77.1.
6. *Display or sale of tobacco or vapor products.* Ordinances regulating the display or sale of tobacco or vapor products must be identical to 37 O.S. § 600.10A.

7. *Distribution of tobacco or vapor products and product samples.* Ordinances regulating the distribution of tobacco or vapor products and product samples must be identical to 37 O.S. § 600.8.

8. *Sale of tobacco products except in original, sealed packaging.* Ordinances prohibiting the sale of tobacco products except in original, sealed packaging must be identical to 37 O.S. § 600.9.

9. *Furnishing of tobacco or vapor products to minors.* Ordinance prohibiting the furnishing of tobacco or vapor products to minors must be identical to 37 O.S. § 600.3.

TRAFFIC AND VEHICLES

1. *Cell phone usage.* Ordinances touching inattentive driving and cellular phone use in motor vehicles are restricted. See 47 O.S. § 15-102.1.

2. *Vehicle registration.* The entire field of legislation touching in any way the enforcement of registration and licensing of automobiles is preempted to the state. See 47 O.S. § 1115.2.

3. *Driving under the influence.* Subject to certain exceptions, the entire field of legislation touching in any way the prosecution of offenses relating to driving under the influence of alcohol or any other intoxicating substance or operating a motor vehicle while impaired to the complete exclusion of any order, ordinance, local legislation or regulation by any municipality is preempted to the state. See 47 O.S. § 11-902c.

4. *Text messaging.* Ordinances regulating texting while driving must be identical to 47 O.S. § 11-901d.

ZONING

1. *Amateur radio antenna or support structures.* Ordinances regulating amateur radio antenna structures are restricted. See 11 O.S. § 55-103.