

INTRODUCTION

State law changes in Oregon impact many provisions in the ordinance codes of Oregon cities. 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 Oregon municipal codes.

This pamphlet is current through the end of the 2016 Regular Session and ballot measures approved at the November 8, 2016 General Election. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication.

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

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GENERAL PROVISIONS

1. *Civil forfeitures.*
 - a. O.R.S. ch. 131A is the sole and exclusive law of the state governing civil forfeiture of real and personal property based on prohibited conduct. Chapter 131A supersedes all charter provisions, ordinances, regulations and other enactments adopted by cities relating to civil forfeitures. See O.R.S. § 131A.010(2), (3).
 - b. The provisions of O.R.S. § 809.730 preempt certain ordinances pertaining to seizure and forfeiture of a vehicle if the person operating the vehicle is arrested or issued a citation for driving while under the influence of intoxicants in violation of O.R.S. § 813.010. See O.R.S. § 809.735.

ADMINISTRATION

1. *New fees or fee increases.* The governing body of a city must provide an opportunity for interested persons to comment on the enactment of any ordinance or resolution prescribing a new fee or a fee increase or an increase in the rate or other manner in which the amount of a fee is determined or calculated. Where a city exercises authority to assume the responsibility for a program delivered by the state, the city shall provide an opportunity to comment on the difference between the fee amount charged by the state for such service and the proposed local fee for the service. See O.R.S. § 294.160.

2. *Refund anticipation notes.* Municipalities may not strict or limit O.R.S. §§ 674.605--673.740. See O.R.S. § 673.715.

ALCOHOLIC BEVERAGES

1. *Local restrictions.* Cities that adopt time, place and manner regulations of the nuisance aspects of establishments that serve alcoholic beverages must make specific findings that the establishments would cause adverse effects to occur. See O.R.S. § 471.164.

BUILDINGS AND BUILDING REGULATIONS

1. *Radio antennas.* Ordinances regulating placement or height of radio antennas are restricted. See O.R.S. § 221.295.

2. *State building code.* The state building code preempts local ordinance and applies statewide. Local ordinances providing different requirements must be authorized by the state. See O.R.S. § 455.040.

3. *Carbon monoxide alarms.* Regulation of the design, inspection, testing, maintenance, placement or location of carbon monoxide alarms is preempted to the state. See O.R.S. § 476.725.

4. *Manufactured structures.* Local regulation of manufactured structures is restricted. See O.R.S. § 446.200.

5. *Disclosure of solid fuel burning devices to purchasers of property.* The disclosure of solid fuel burning devices, as defined in O.R.S. § 468A.485, in connection with a written offer to purchase real property for which a seller's property disclosure statement is required under O.R.S. §§ 105.465 and 105.470 is preempted to the state. See O.R.S. § 105.463.

BUSINESSES

1. *Municipal regulation of utilities.* Local regulation of utilities is restricted. See O.R.S. §§ 221.420, 758.025.

2. *Entertainment.* Cities that adopt time, place and manner regulations of the nuisance aspects of establishments that offer entertainment must make specific findings that the establishment would cause adverse effects to occur. See O.R.S. § 471.164.

3. *Master plumbers.* Local regulation of the business of master plumber is restricted. See O.R.S. § 447.080.

4. *Real estate brokers.* City licensing of real estate brokers is restricted. See O.R.S. § 696.365.

5. *Insurance taxes and licenses.* The field of regulating or of imposing excise, privilege, franchise, income, license, permit, registration, and similar taxes, licenses and fees upon insurers and their insurance producers and other representatives as such is generally preempted to the state. See O.R.S. § 731.840.

6. *ATM and night deposit facilities.* Regulations regarding customer safety at ATMs or night deposit facilities are preempted to the state. See O.R.S. § 714.310.

7. *Race meets.* The imposition of taxes on or measured by income on, and the regulation of, race meets are preempted to the state. See O.R.S. § 462.100.

8. *Minimum wages.* Subject to certain exceptions, the imposition of minimum wage requirements are preempted to the state. See O.R.S. § 653.017.

9. *Private security providers.* Regulation of private security providers is preempted to the state. See O.R.S. § 181A.895.

10. *Precious metal secondhand dealers.* Subject to certain exceptions, a city may not require a precious metal secondhand dealer in this state who is also a pawnbroker licensed under O.R.S. ch. 726

to provide a photograph of an item of precious metal acquired through a transaction. See O.R.S. § 646A.067.

ENVIRONMENT AND NATURAL RESOURCES

1. *Water wells and water well contractors.* As groundwater protection is a matter of statewide concern, the inspection of water wells, construction of water wells and regulation of water well constructors are preempted to the state. See O.R.S. § 537.769.

2. *Pesticides.* The regulation of pesticide sale or use is preempted to the state. See O.R.S. § 634.057.

3. *Disclosure of solid fuel burning devices.* Ordinances regarding the disclosure of solid fuel burning devices in connection with a written offer to purchase real property in this state for which a seller's property disclosure statement is required under O.R.S. §§ 105.465 and 105.470 are preempted to the state. See O.R.S. § 105.463.

FIRE PREVENTION AND PROTECTION

1. *Fireworks.* Local regulation of fireworks is restricted. See O.R.S. § 480.160.

HUMAN RIGHTS

1. *Sexual orientation.* Ordinances granting special rights, privileges or treatment to any citizen or group of citizens on account of sexual orientation, or ordinance, resolution or policy that singles out citizens or groups of citizens on account of sexual orientation are preempted to the state. See O.R.S. § 659.870.

OFFENSES AND MISCELLANEOUS PROVISIONS

1. *Firearms.* City regulation of the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition, is restricted. See O.R.S. §§ 166.170, 166.172--166.175.

2. *Shooting ranges.* Local regulation of shooting ranges is restricted. See O.R.S. § 467.136.

2. *State lottery.* Local ordinances may not conflict with the state lottery. See O.R.S. § 461.030.

TAXATION

1. *Insurance.* Local taxation of insurers is restricted. See O.R.S. §§ 731.840, 731.841.

TRAFFIC AND VEHICLES

1. *Truck routes.* Adoption of ordinances pertaining to truck routes is subject to special formalities. See O.R.S. § 227.400.

UTILITIES

1. *System development charges.* Water and sewer system development charges are restricted. See O.R.C. § 223.297 et seq.

ZONING

1. *Religious activities.* Local regulation of real property used for religious activity is restricted. See O.R.S. § 227.500.

2. *Mobile home or manufactured dwelling parks.* Cities must provide for mobile homes or manufactured dwelling parks as an allowed use. See O.R.S. § 197.480 et seq.

3. *Manufactured dwellings.* Cities may not totally prohibit manufactured dwellings. See O.R.S. § 197.485.

4. *Group homes.* Zoning of group homes for persons with mental retardation or other developmental disabilities, mental, emotional or behavioral disturbances or alcohol or drug dependence or adults is restricted. See O.R.S. § 197.660 et seq.