

INTRODUCTION

State law changes in Oregon impact many provisions in the ordinance codes of Oregon cities. This pamphlet is intended to assist city 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 laws enacted in the 2018 Regular Session and 2018 Special Session of the 79th Legislative Assembly; ballot measures approved and rejected at the Nov. 6, 2018 general election; and emergency legislation, 91-day legislation, and general effective legislation effective Jan. 1, 2020, enacted during the 2019 Regular Session of the 80th Legislative Assembly, which adjourned sine die June 30, 2019, pending classification of undesignated material and text revision by the Oregon Reviser.

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.* Subject to certain exceptions, ORS. ch. 131A is the sole and exclusive law of the state governing civil forfeiture of real and personal property based on prohibited conduct. ORS ch. 131A supersedes all charter provisions, ordinances, regulations and other enactments adopted by cities relating to civil forfeitures. See ORS 131A.010. See also ORS 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 ORS 294.160.

2. *Refund anticipation notes.* Cities may not restrict or limit ORS 674.605 through 673.740. See ORS 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 ORS 471.164.

BUILDINGS AND BUILDING REGULATIONS

1. *Radio antennas.* Ordinances regulating placement or height of radio antennas are restricted. See ORS 221.295.

2. *State building code.* The state building code preempts local ordinances and applies statewide. Local ordinances providing different requirements must be authorized by the state. See ORS 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 ORS 476.725.

4. *Manufactured structures.* Local regulation of manufactured structures is restricted. See ORS 446.200.

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

BUSINESSES

1. *Municipal regulation of utilities.* Local regulation of utilities is restricted. See ORS 221.420 and ORS 758.025.

2. *Entertainment or alcoholic beverages.* Cities that adopt time, place and manner regulations of the nuisance aspects of establishments that offer entertainment or serve alcoholic beverages must make specific findings that the establishment would cause adverse effects to occur. See ORS 471.164.

3. *Master plumbers.* Local regulation of the business of master plumber is restricted. See ORS 447.080.

4. *Real estate brokers.* City licensing of real estate brokers is restricted. See ORS 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 ORS 731.840.

6. *ATMs and night deposit facilities.* Regulations regarding customer safety at ATMs or night deposit facilities are preempted to the state. See ORS 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 ORS 462.100.

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

9. *Private security providers.* Regulation of private security providers is preempted to the state. See ORS 181A.895.

10. *Precious metal secondhand dealers.* A city may not require a precious metal secondhand dealer in the state who is also a pawnbroker licensed under ORS ch. 726 to provide a photograph of an item of precious metal acquired through a transaction. See ORS 646A.067.

11. *Employee work schedules.* Subject to certain exceptions, local governments are preempted from enacting a requirement relating to work schedules. See ORS 653.490.

12. *Debt buyers.* Subject to certain exceptions, local licensing or registration of debt buyers is preempted. See ORS 646A.667.

13. *Paid family medical leave.* Ordinances pertaining to paid family and medical leave are preempted. See Laws 2019, ch. 700, § 61.

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 ORS 537.769.

2. *Pesticides.* The regulation of pesticide sale or use is preempted to the state. See ORS 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 the state for which a seller's property disclosure statement is required under ORS 105.465 and 105.470 are preempted to the state. See ORS 105.463.

4. *Plastic straws.* Laws 2019, ch. 362 is preemptive.

5. *Single-use checkout bag.* Laws 2019, ch. 433 is preemptive.

FIRE PREVENTION AND PROTECTION

1. *Fireworks.* Local regulation of fireworks is restricted. See ORS 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 ordinances, resolutions or policies that single out citizens or groups of citizens on account of sexual orientation, are preempted to the state. See ORS 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 ORS 166.170, 166.172 through 166.175.

2. *Shooting ranges.* Local regulation of shooting ranges is restricted. See ORS 467.136.

3. *State lottery.* Local ordinances may not conflict with the state lottery. See ORS 461.030.

4. *Marijuana.* As marijuana for adults has been legalized (see ORS 475B.301), local ordinances are restricted. See ORS 475B.477 and 475B.968.

TAXATION

1. *Insurance.* Local taxation of insurers is restricted. See ORS 731.840 and 731.841.

2. *Commercial activity or receipts from grocery sales.* Subject to certain exceptions, a municipal corporation may not impose a tax upon commercial activity or upon receipts from grocery sales. See Laws 2019, ch. 122, § 67.

3. *Tax exemptions for home share properties.* Tax exemptions for home share properties are allowed. See Laws 2019, ch. 566.

TRAFFIC AND VEHICLES

1. *Truck routes.* Adoption of ordinances pertaining to truck routes is subject to special formalities. See ORS 227.400.

UTILITIES

1. *System development charges.* Water and sewer system development charges are restricted. See ORS 223.297 et seq.

ZONING

1. *Religious activities.* Local regulation of real property used for religious activity is restricted. See ORS 227.500.

2. *Mobile home or manufactured dwelling parks.* Cities must provide for mobile home or manufactured dwelling parks as an allowed use. See ORS 197.480 et seq.

3. *Manufactured dwellings.* Cities may not totally prohibit manufactured dwellings. See ORS 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 is restricted. See ORS 197.660 et seq.

5. *Duplexes, triplexes, etc.* Certain municipalities must allow duplexes, triplexes, etc. See Laws 2019, ch. 639.