

SOUTH CAROLINA LAWS

State law changes in South Carolina impact many provisions in the ordinances and Codes of South Carolina municipalities. This pamphlet is intended to assist municipal attorneys in the identification of provisions in ordinances and 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 ordinances and Codes of South Carolina municipalities.

This pamphlet is current through the end of the 2017 legislative session.

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.

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GENERAL PROVISIONS

1. *Penalty for ordinance violations.* The maximum penalty for an ordinance violation is a fine not exceeding \$500.00 or imprisonment not exceeding 30 days, or both. See S.C. Code 1976, § 5-7-30.

ADMINISTRATION

1. *When ordinance required.* Certain council actions are required to be done by ordinance. See S.C. Code 1976, § 5-7-260.

2. *Fees.* Service and user fees are limited. See S.C. Code 1976, § 6-1-330.

ALCOHOLIC BEVERAGES

1. *Preemption.* Subject to certain exceptions, the field of alcohol regulation is preempted to the state. See S.C. Code 1976, § 61-6-4490. See also *Denene, Inc. v. City of Charleston*, 574 S.E.2d 196 (S.C. 2002).

ANIMALS

1. *Livestock and poultry.* Municipalities may not enact ordinances, orders, or other regulations concerning the care and handling of livestock and poultry and all such existing ordinances are preempted. See S.C. Code 1976, § 47-4-160.

BUILDINGS AND BUILDING REGULATIONS

1. *Building and technical codes.* Municipalities are required to adopt and enforce certain building codes. See S.C. Code 1976, § 6-9-5 et seq.

2. *Elevator.* Local regulation of elevators is preempted. See S.C. Code 1976, § 41-16-160.

BUSINESS REGULATIONS AND BUSINESS LICENSING

1. *Hotels, restaurants, cafes and lunch counters.* Penalties for violations of ordinances regulating hotels, restaurants, cafes and lunch counters for public health, comfort and convenience are restricted. See S.C. Code 1976, § 45-3-10 et seq.

2. *Price gouging.* Evidentiary standards for local price gouging ordinances are restricted. See S.C. Code 1976, § 39-5-145(J).

3. *"One-call before you dig system."* The Underground Facility Damage Prevention Act preempts ordinances on certain subjects. See S.C. Code 1976, § 58-36-30.

4. *Business license fees.*

a. Municipal business license fees upon businesses earning income in other municipalities or counties are restricted. See S.C. Code 1976, § 5-7-30.

b. Municipal license taxes or fees upon real estate brokers and auctioneers are restricted. See S.C. Code 1976, § 6-1-315.

c. The maximum business license tax on retail telecommunications services is restricted. See S.C. Code 1976, § 58-9-2200 et seq.

5. *Nonferrous metals.* Subject to certain exceptions, ordinances and regulations governing the purchase, sale, or transportation of nonferrous metals are preempted to the state. See S.C. Code 1976, § 16-17--680(K).

6. *Precious metals purchasers.* Ordinances regulating the business of purchasing precious metals are preempted to the state. See S.C. Code 1976, § 40-54-90.

7. *Cable television*. The entire field of franchising or otherwise regulating cable and video service is preempted to the state. See S.C. Code 1976, § 58-12-5.

8. *Financial institutions and money lenders*. Regulation of financial services or lending practices is preempted to the state. See S.C. Code 1976, § 34-1-140.

9. *Agriculture*. Municipal regulation of agricultural operations is restricted. See S.C. Code 1976, § 46-45-60.

10. *Forestry*. Municipal regulation of forestry operations is restricted. See S.C. Code 1976, § 50-2-50.

11. *Amusement ride safety*. The South Carolina Amusement Rides Safety Code 1976 preempts local ordinances. See S.C. Code 1976, § 41-18-140.

12. *Transportation network companies ("Uber")*. Local regulation of transportation network companies and drivers is restricted. See S.C. Code 1976, § 58-23-1710.

MANUFACTURED HOUSING

1. *Local inspection fees and standards*. Local inspection fees and installation standards or regulations for manufactured housing are limited. See S.C. Code 1976, § 40-29-350.

MUNICIPAL COURT

1. *Term of municipal judge*. The term of the municipal judge must be within perimeters provided for in S.C. Code 1976, § 14-25-15.

2. *Public service*. The municipal court may require public service work as condition of suspension of sentence. The number of hours of work is limited. See S.C. Code 1976, § 24-23-115.

OFFENSES AND MISCELLANEOUS

1. *Firearms and ammunition*. Subject to certain exceptions, local regulation of firearms and ammunition is restricted. See S.C. Code 1976, § 23-31-510 et seq.

2. *Sex offender residency*. Municipal power to regulate the place of residence of sex offenders is restricted. See S.C. Code 1976, § 23-3-535.

3. *Parades and use of public property*. Ordinances as regarding parades, permits, and similar uses of public property should be reviewed in light of *Cox v. City of Charleston*, 416 F.3d 281 (4th Cir. 2005).

4. *Sound amplification devices*. Restrictions on use of sound amplification devices should be read in light of *Jim Crockett Productions v. City of Charlotte*, 706 F.2d 486 (4th Cir. 1983) and *U.S. Labor Party v. Pomerleau*, 557 F.2d 410 (4th Cir. 1977).

5. *Unnecessary noises*. In *Jim Crockett Productions v. City of Charlotte*, 706 F.2d 486 (4th Cir. 1983), the court deemed the term "unnecessary" in a noise ordinance to be unconstitutionally vague.

6. *Seeds*. The whole field of regulation regarding the registration, licensing, labeling, sale, storage, transportation, distribution, notification of use, and use of seeds is preempted to the state to the exclusion of all local regulations. See S.C. Code 1976, § 46-21-25.

7. *Ephedrine, pseudoephedrine, or phenylpropanolamine*. Ordinances or regulations governing the possession of any product that contains ephedrine, pseudoephedrine, or phenylpropanolamine are preempted to the state. See S.C. Code 1976, § 44-53-398.

8. *Crop pests*. Municipalities may not regulate matters within the jurisdiction of the state crop pest commission. See S.C. Code 1976, § 46-9-110.

PLANNING, ZONING AND LAND USE REGULATION

1. *Church-related activities.* Church-related activities cannot be prohibited in a single-family residence. See S.C. Code 1976, § 6-29-715.
2. *Land development ordinances--Vested rights.* Land development ordinances must contain certain provisions relative to vested rights. See S.C. Code 1976, § 6-29-1510 et seq.

TAXATION

1. *Real estate transfer fees.* Subject to certain exceptions, real estate transfer fees are prohibited. See S.C. Code 1976, § 6-1-70.

TRAFFIC AND VEHICLES

1. *Idling restrictions on commercial diesel vehicles.* The subject of idling restrictions on commercial diesel vehicles is preempted to the state. See S.C. Code 1976, § 56-35-70.
2. *Texting while driving.* Ordinances regarding persons using wireless electronic communication devices while operating motor vehicles on the public streets and highways are preempted. See S.C. Code 1976, § 56-5-3890.

UTILITIES

1. *Discontinuance of service for nonpayment.* Subject to limited exceptions, a municipality must not interrupt electric or gas service to any residential customer for nonpayment of a bill until 25 days have elapsed from the date of billing. See S.C. Code 1976, § 5-31-690.

WATERWAYS

1. *Ordinances regulating vessels.* Local ordinances concerning operation of vessels on state waters must be identical to S.C. Code 1976, title 50, ch. 21. See S.C. Code 1976, § 50-21-30.