

## INTRODUCTION

State law changes in South Dakota impact many provisions in the ordinance codes of South Dakota 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 South Dakota municipal codes.

This pamphlet is current through the 2016 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.

It is not the intent of Municipal Code Corporation in publishing this pamphlet to provide legal advice. An attorney admitted to practice in South Dakota must be consulted as to the applicability of a given statute or case to a particular situation.

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## GENERAL PROVISIONS

1. *Home rule units.*
  - a. Chartered (home rule) cities may exercise any legislative power or perform any function not denied by its charter, the Constitution or the general laws of the state. The charter may provide for any form of executive, legislative and administrative structure which shall be of superior authority to statute. SD Const. art. IX, § 2.
  - b. Absent provisions specifically providing to the otherwise, SDCL title 9 applies only to general law municipalities. See SDCL 9-1-2.
2. *Classes of general law municipalities.* General law municipalities are divided into three classes on the basis of population. See SDCL 9-2-1.
3. *Penalty for ordinance violations.* The maximum penalty that is authorized for a violation of an ordinance of a general law municipality is a fine not exceeding \$500.00 and/or imprisonment not exceeding 30 days. See SDCL 9-19-3, 22-6-2(2).

## ANIMALS

1. *Service animals.* Service animals cannot be prohibited in public places. See SDCL 20-13-23.2.

## BUILDINGS AND BUILDING REGULATIONS

1. *Building codes.* The 2015 edition of the International Building Code is a mandatory statewide standard. See SDCL 11-10-5, 11-10-6.
2. *State plumbing code.* The state plumbing code constitutes minimum standards. See SDCL 36-25-16.
3. *Electricians and electrical contractors.* Municipal regulation of electricians and electrical contractors must be more stringent than SDCL ch. 36-16. See SDCL 36-16-35.

## BUSINESSES AND PROFESSIONS

1. *Insurance regulation.* The field of regulating insurers and their insurance producers and solicitors is preempted to the state. Municipalities are prohibited from requiring of any insurer, insurance producer, or insurance solicitor any authorization, permit, or registration of any kind for conducting transactions lawful under the authority granted by the state under SDCL title 58. See SDCL 58-6-3.

## ENVIRONMENT AND AGRICULTURE

1. *Seeds, feed, fertilizer and pesticides.* Subject to certain exceptions, the subjects of production, use, advertising, sale, distribution, storage, transportation, formulation, packaging, labeling, certification, registration, application, planting, or disposal of seed, commercial fertilizer, commercial feed, animal remedies and pesticides are preempted to the state. See SDCL 39-1-17.

## FIRE PREVENTION AND PROTECTION

1. *Cigarette fire safety standards.* The provisions of SDCL ch. 34-39 preempt local ordinances on the same subject. See SDCL 34-29-21.

## OFFENSES AND MISCELLANEOUS PROVISIONS

1. *Firearms.* Possession, transportation, sale, transfer, ownership, manufacture, or repair of firearms or ammunition or their components is preempted to the state. See SDCL 9-19-20.
2. *Sex offender residence and community access.* No municipal ordinance may restrict or mitigate residence or community access for convicted sex offenders inconsistent with the provisions of SDCL 22-24B-22 to 22-24B-28. See SDCL 22-24B-25.

## SOLID WASTE

1. *Beverage containers, garbage bags, and garbage can liners, etc.* Subject to certain exceptions, the provisions of SDCL ch. 34A-7 relating to beverage containers, garbage bags, and garbage can liners, and SDCL 34A-6-68 relating to uniform recycling codes for plastic containers, shall preempt all ordinances relating to beverage containers, garbage bags, or plastic packaging materials. No other political subdivision of the state may enact any law restricting the use in commerce of plastic beverage containers, garbage bags, or plastic packaging materials. See SDCL 24A-6-92.