

TEXAS STATE LAWS AFFECTING MUNICIPAL ORDINANCES

State law changes in Texas impact many provisions in the ordinance codes of Texas 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 ordinances and codes of Texas municipalities.

This pamphlet is current through the end of the 2017 Regular and First Called Sessions of the 85th Legislature.

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 Texas 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.*
 - a. Texas Local Government Code § 54.001 provides that the maximum penalty for violation of a municipal ordinance, rule or police regulation:
 - i. Is \$500.00.
 - ii. Governing fire safety, zoning or public health and sanitation, is \$2,000.00.
 - iii. Governing the dumping of refuse is \$4,000.00.
 - b. Because Texas Penal Code § 6.02 allows a municipality to dispense with the requirement of a culpable mental state for the violation of a municipal ordinance if the penalty for violation of the ordinance does not exceed \$500.00, many municipalities restrict penalties to a fine of \$500.00 and dispense with a culpable mental state. See Texas Penal Code §§ 6.02(f), 12.23.

ADMINISTRATION

1. *Fire extinguishers in municipal motor vehicles.* If a municipal ordinance, order or policy requires vehicles owned by the municipality to be equipped with portable fire extinguishers, the municipality must require annual maintenance on the portable fire extinguishers in accordance with certain standards. See Texas Local Government Code § 370.005.

ALCOHOLIC BEVERAGES

1. *Municipal regulation restricted.* The authority of municipalities to regulate the manufacture, sale, distribution, transportation and possession of alcoholic beverages is restricted. See Texas Alcoholic Beverage Code §§ 1.06, 109.57.
2. *Permissible municipal regulation.* Municipalities are authorized, among other things, to:
 - a. Require permit and license fees. See Texas Alcoholic Beverage Code §§ 11.38, 61.36.
 - b. Impose location, hours of sale and consumption, and open container and public consumption restrictions. See Texas Alcoholic Beverage Code §§ 105.01 et seq. and 109.31 et seq.
 - c. Regulate billboards, electric signs and outdoor advertising. See Texas Alcoholic Beverage Code § 108.52 et seq.

ANIMALS

d. *Dogs and cats and rabies control.* Municipal ordinances regulating dogs and cats or providing for rabies control should be reviewed carefully in light of the mandatory provisions of Texas Health and Safety Code ch. 826.

2. *Dogs at large.* The power to require restraint of dogs running at large used to protect livestock has been restricted. See Texas Agriculture Code § 251.005.

BUILDINGS AND BUILDING REGULATIONS

1. *Building codes.* Certain minimum building codes must be adopted and minimum requirements are established for ordinances of municipalities that adopt codes other than the state-mandated codes. See Texas Local Government Code § 214.211 et seq.

2. *Substandard buildings.* There are minimum requirements for municipal ordinances providing for vacation, demolition, etc., and relocation of occupants of substandard buildings at the expense of the owners. See Texas Local Government Code § 214.001 et seq.

3. *Swimming pool fences and enclosures.* Municipal standards for swimming pool fences and enclosures must be the same as the requirements of Texas Health and Safety Code ch. 757. See Texas Local Government Code § 214.101.

4. *Manufactured housing.*

a. Local governmental units are prohibited from adopting standards for the construction or installation of manufactured housing that are different from those adopted by the Manufactured Housing Board within the Texas Department of Housing and Community Affairs without the express approval of the board. See Texas Occupations Code § 1201.252.

b. Location and installation restrictions are limited. See Texas Occupations Code § 1201.008.

5. *Industrialized buildings.* Municipal regulation of industrialized housing and buildings is restricted. See Texas Occupations Code § 1202.251 et seq.

6. *Smoke alarms in dwelling units.* Local regulation of smoke alarms in dwelling units is restricted. See Texas Property Code § 92.252.

BUSINESSES

1. *Authority to deny, suspend or revoke business licenses.* The right of a municipality to deny, suspend or revoke a business license due to a criminal conviction is regulated and restricted. See Texas Occupations Code ch. 53.

2. *Air conditioning and refrigeration contractors.* A person licensed by the state as an air conditioning and refrigeration contractor is not required to hold a municipal license. See Texas Occupations Code § 1302.251.

3. *Auctioneers.* Municipalities may not license or tax auctioneers who are licensed

under Texas Occupations Code ch. 1802. See Texas Occupations Code § 1802.003.

4. *Metal recyclers.* Municipal regulation of metal recyclers is restricted. See Texas Occupations Code § 1956.003.

5. *Liquefied petroleum gas industry.* Municipalities may not adopt ordinances relating to any aspect of the liquefied petroleum gas industry without state permission. See Texas Natural Resources Code § 113.054.

6. *Pawnshops.* Texas Finance Code ch. 371 preempts local regulation of pawnshops. See Texas Finance Code § 371.005. A municipality must designate pawnshops licensed by the state as a permitted use in one or more zoning districts and may not require a specific use or similar permit for such use. See Texas Local Government Code § 211.0035.

7. *Pest control.*

a. Municipalities may not license structural pest control operators. See Texas Occupations Code § 1951.201.

b. Municipal regulation of the sale and use of pesticides is restricted. See Texas Occupations Code § 1951.005.

8. *Public safety organizations.* Municipal ordinances applicable to solicitations by public safety organizations, publications and independent promoters are preempted and superseded as to persons registered under Texas Occupations Code ch. 1803. See Texas Occupations Code § 1803.002.

9. *Tow trucks.* Local regulation of tow trucks is restricted. See Texas Occupations Code § 2308.201 et seq.

10. *Transportation network (riding sharing) companies (Uber, etc.).* Local regulation of transportation network companies, drivers logged in to a digital network, and vehicles used to provide digitally prearranged rides is, subject to certain exceptions, preempted. See Texas Occupations Code § 2402.003.

EMERGENCY SERVICES

1. *Burglar alarms.* Local regulation of burglar alarm systems is restricted. See Texas Local Government Code §§ 214.191 et seq., 214.201 et seq.

2. *Fire alarms.* Municipal regulation of fire detection systems and fire alarm device installation is restricted. See Texas Insurance Code § 6002.003.

ENVIRONMENT AND NATURAL RESOURCES

1. *Junked vehicles.* Municipal ordinances that provide for the abatement and removal from private or public property or a public right-of-way of a junked vehicle or part of a junked vehicle as a public nuisance must contain specified provisions. See Texas Transportation Code § 683.074.

2. *Graffiti removal ordinances.* Municipal graffiti removal ordinances are subject to certain mandatory requirements. See Texas Local Government Code § 250.006.

3. *Oil and gas operations.* Municipal regulation of oil and gas operations is restricted. See Texas Natural Resources Code § 81.0523.

OFFENSES AND MISCELLANEOUS PROVISIONS

1. *Penal Code preemption.* Texas Penal Code § 1.08 prohibits governmental subdivisions from enacting or enforcing ordinances covering conduct regulated by the Penal Code.

2. *Weapons.* Subject to certain exceptions, municipal regulations relating to the transfer, private ownership, keeping, transportation, licensing, or registration of firearms, air guns, knives, ammunition, or firearm supplies are preempted. See Texas Local Government Code § 229.001.

3. *Age of majority.*

a. The age of majority is 18 years. See Texas Civil Practice and Remedies Code § 129.001.

b. Laws, rules and ordinances enacted or adopted before August 27, 1973, are altered accordingly, except for alcoholic beverage regulations. See Texas Civil Practice and Remedies Code §§ 129.002, 129.003.

4. *Curfew for minors.* A municipality must review, conduct public hearing on, and continue a juvenile curfew ordinance every three years. Failure to do so causes the ordinance to expire. See Texas Local Government Code § 370.002.

5. *Glue and paints.* Municipal requirements relative to display of an abusable volatile chemical in a manner that makes the chemical accessible to patrons of the business only with the assistance of personnel of the business are generally prohibited. See Texas Health and Safety Code § 485.018.

6. *Church overnight shelters for children.* Municipal regulation of overnight shelters for children operated by churches is restricted. See Texas Local Government Code § 215.006.

7. *Fireworks—Home rule municipalities.* The regulation of the sale of fireworks by home rule municipalities is restricted. See Texas Local Government Code § 217.042.

8. *Low-THC cannabis.* Ordinances prohibiting the production, dispensing, or possession of low-THC cannabis as authorized by law are prohibited. See Texas Health and Safety Code § 487.201.

9. *Unmanned aircraft (drones).* Local regulation of drones is generally preempted. See Texas Government Code § 323.009.

10. *Possession or use of law enforcement identification, insignia or vehicle.* Texas Penal Code § 341.904 now applies in all municipalities.

SIGNS

1. *Political signs.* Municipal regulation of political signs is restricted. See Texas Local Government Code § 216.903.

SOLID WASTE

1. *Containers.* A local government may not adopt an ordinance, rule or regulation to: (1) prohibit or restrict, for solid waste management purposes, the sale or use of a container or package in a manner not authorized by state law, (2) prohibit or restrict the processing of solid waste by a solid waste facility, except for a facility owned by the local government, permitted by the state for that purpose in a manner not authorized by state law, or (3) assess a fee or deposit on the sale or use of a container or package. Exceptions include compliance with state or federal requirements and zoning ordinances. See Texas Health and Safety Code § 361.0961.

TAXATION

1. *Property Tax Code.* Subject to certain exceptions, the Property Tax Code, Texas Tax Code title 1, supersedes most municipal ordinances and charters insofar as they deal with property taxation. See Texas Tax Code § 1.02.

2. *Occupation taxes.*

a. Municipalities may not levy occupation taxes on businesses subject to license tax under Texas Tax Code title 2, unless specifically authorized by state law. See Texas Tax Code § 101.008.

b. A municipality may impose an occupation tax on a coin-operated machine. The rate of a municipal tax on a coin-operated machine may not exceed one-fourth of the rate of the tax imposed under Texas Occupations Code § 2153.401. See Texas Occupations Code § 2153.451.

TELECOMMUNICATIONS

1. *Right-of-way management.* Municipal regulation of the use of a public right-of-way by a telecommunications provider is restricted. See Texas Local Government Code ch. 283.

TRAFFIC AND VEHICLES

1. *Texting and driving prohibited.* Ordinance relative to the use of wireless communication devices while driving a motor vehicle on public roads are preempted. See Texas Transportation Code § 545.4251.

2. *Automated motor vehicles or automated driving systems.* Local governments may not impose a franchise or other regulation related to the operation of an automated motor vehicle or automated driving system. See Texas Transportation Code § 545.452.

UTILITIES

1. *Liens.* Municipal authority relative to liens for delinquent utility bills is restricted. See Texas Local Government Code § 552.0025.

ZONING

1. *Alcoholic beverages.* Zoning ordinances restricting alcoholic beverage establishments are restricted. See Texas Alcoholic Beverage Code § 109.57.

2. *Community homes for disabled persons.* A community home for disabled persons is a use by right that is authorized in any district zoned as residential. See Texas Human Resources Code § 123.003.

3. *Pawnshops.* A municipality must designate pawnshops licensed by the state as a permitted use in one or more zoning districts and may not require a specific use or similar permit for such use. See Texas Local Government Code § 211.0035.