



Hot Topics Update

32nd Annual NC Health Directors Legal Conference

Local Government Regulation of Smoking

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Understanding the Matrix!

Businesses
Public Buildings
Property Abutting Schools
Hospitals
Sidewalks



N.C. Gen. Stat. § 130A-498

Subject to the provisions of N.C. Gen. Stat. § 130A-498 (e) which states:

“A county ordinance adopted under this section is subject to the provisions of N.C. Gen. Stat. § 153A-122.”

N.C. Gen. Stat. § 153A-122 (e) states:



N.C. Gen. Stat. § 153A-122

§ 153A-122. Territorial jurisdiction of county ordinances

Except as otherwise provided in this Article, the board of commissioners may make any ordinance adopted pursuant to this Article applicable to any part of the county not within a city. In addition, the governing board of a city may by resolution permit a county ordinance adopted pursuant to this Article to be applicable within the city. The city may by resolution withdraw its permission to such an ordinance. If it does so, the city shall give written notice to the county of its withdrawal of permission; 30 days after the day the county receives this notice the county ordinance ceases to be applicable within the city.



WHO'S ON FIRST?....

"A rule or policy adopted on or after July 1, 2009 pursuant to this subsection by a local board of health or entity exercising the powers of a local board of health **MUST BE APPROVED BY AN ORDINANCE ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY TO WHICH THE RULE APPLIES.**" N.C. Gen. Stat. § 130A-498(a).



What exactly did the legislature intend when it inserted the "approval by an ordinance" language into the enabling statute?



Public Health Rule v. Ordinance

Public Health Rule

Ordinance

- Health Care Professionals as decision makers and drafters of rule.
 - Not subject to the provisions of N.C. Gen. Stat. § 153A-122.
 - P.H. Rule applies to all municipalities within its territorial jurisdiction without resolution of municipality. N.C. Gen. Stat. § 130A-39(c).
- County Commissioners making the decision.
 - Subject to the provisions of N.C. Gen. Stat. § 153A-122 and must have resolution from municipality
 - No continuity re: enforcement if municipality decides to opt out.



Attorney General's Advisory Letter

"In our opinion, it is within the power of a county Board of Health to adopt a rule to prohibit smoking in county and town buildings, vehicles and grounds and in public places in that county and the towns within that county"



Currently this is the only legal guidance we have from the State on this issue.

