# The Police Power: General Ordinance Authority of Counties and Cities



## May a City Ordinance . . .

- 1. Limit the number of cats per residence?
- 2. Set the rates charged by taxicab operators?
- 3. Prohibit the keeping of hog pens within 100 yards of another's residence?
- 4. Mandate that junkyards be fenced for purely aesthetic reasons?
- 5. Limit the size of soft drinks sold?

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# I. "Police Power" Defined

- "Police power" <u>doesn't</u> refer primarily to law enforcement.
- Police power is a state's authority "to govern men and things within the limits of its dominion." *Brown v. Maryland*, 25 U.S. (12 Wheat.) 419, 443 (1827).



#### Police power has two main attributes:

- (1) "it aims directly to secure and promote the public welfare," and
- (2) "it does so by restraint and compulsion."

Ernst Freund, *The Police Power, Public Policy and Constitutional Rights* § 3 (1904).

II. Local Gov't Police Power Statutes

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- General Assembly has delegated some of state's police power to counties and cities.
- State law authorizes a county or city to "by ordinance" define, regulate, prohibit, or abate "acts, omissions, or conditions detrimental to the <u>health, safety, or welfare</u> of its citizens and the peace and dignity of the [city or county], and [to] define and abate <u>nuisances</u>." <u>G.S. 153A-121</u>, <u>160A-174</u>.

 For local gov'ts, the police power = general ordinance-making authority.

- <u>Chapter 153A, Article 6</u> (police power of counties)
- <u>Chapter 160A, Article 8</u> (police power of cities)



#### We're not talking about:

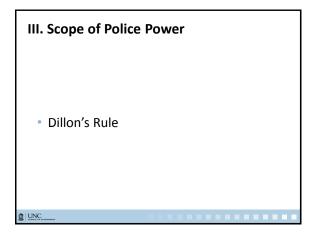
- Zoning Authority under Chapter <u>153A</u>, <u>Article 18</u>, or <u>Chapter 160A</u>, <u>Article 19</u>
- Minimum Housing Codes under <u>Chapter 160A</u>, <u>Article 19</u>
- Repair, Closing, Demolition of Nonresidential Structures under <u>Chapter 153A</u>, <u>Article 18</u>, or <u>Chapter 160A</u>, <u>Article 19</u>
- Nuisance Abatement Actions under <u>Chapter 19</u>, <u>Article 1</u>

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• Enumeration of powers in Chapter 153A, Article 6 and 160A, Article 8 is not exclusive. <u>G.S. 153A-124, 160A-177</u>.





- G.S. 160A-4: Provisions of Chapter 160A and of city charters "shall be <u>broadly</u> <u>construed</u> and grants of power shall be construed to include <u>any additional and</u> <u>supplemental powers . . . reasonably</u> <u>necessary or expedient</u> to carry them into execution and effect."
- <u>G.S. 153-4</u> imposes nearly identical rule of construction for Chapter 153A.

- NC Supreme Court hasn't uniformly applied G.S. 160A-4 and 153A-4 when evaluating lawfulness of ordinances.
- Unanswered question: Does broad construction mandate apply to G.S. 153A-121 and 160A-174?



King v. Town of Chapel Hill, 743 S.E.2d 666 (2013)
Towing operator challenged Town's towing and mobile phone ordinances.

• Supreme Court first ruled that <u>160A-174</u> must be interpreted broadly.

 Broadly construed, <u>160A-174</u> encompasses power to require posted towing notices and acceptance of different methods of payment.

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#### Broadly construed, <u>160A-174</u> does not allow a municipality to cap fees for non-consensual towing from private lots.

- Express statutory authorization required.
- State statutes limiting drivers' mobile phones preempted the Town's mobile phone ordinance.



### Test for Valid Ordinance After King

- Does the ordinance concern a plausible risk to the public's well-being?
- Are the ordinance's specific requirements reasonably calculated to mitigate or avoid that risk?
- Is the ordinance preempted by higher law?

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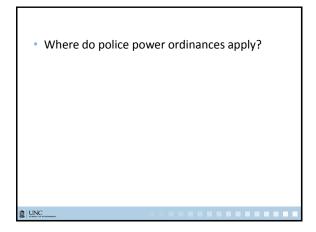
- <u>King v. Town of Chapel Hill: The Supreme</u> <u>Court Issues a Major Decision on the Police</u> <u>Power of Local Governments (Part 1)</u>
- <u>King v. Town of Chapel Hill: The Supreme</u> <u>Court Issues a Major Decision on the Police</u> <u>Power of Local Governments (Part 2)</u>

#### **IV. Exercising Police Power**

 What if another statute regulates a matter that falls under G.S. 160A-174 or 153A-121?

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- City Council unanimously adopts resolution banning door-to-door solicitations between the hours of 9:00 p.m. and 6:00 a.m.
  - Resolution exempts individuals going door-to-door to promote political or religious causes.
- Valid exercise of police power conferred by G.S. 160A-174?

## V. Limits on Police Power

An ordinance is preempted if it:

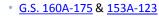
- Infringes a liberty protected by the N.C. or U.S. Constitution
- Outlaws something lawful under higher law
- Permits something unlawful under higher law
- Regulates a subject that higher law expressly forbids the local gov't to regulate
- Regulates a field subject to implied preemption
- Defines and punishes an act already defined as a crime or infraction under higher law

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 Craig v. Chatham County (2002): Ordinance regulating large-scale hog farming operations in Chatham County was preempted by state's comprehensive hog farm statutes and regulations.

# **VI. Enforcing Ordinances**



- Criminal sanctions
  - Ordinance violation = Class 3 misdemeanor unless governing board provides otherwise.
    - What if ordinance regulates operation or parking of vehicles?

- Max fine of \$500
  - \$50 max penalty for infraction
- Where does the money go?

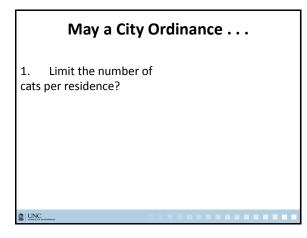
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- Civil penalty
  - No statutory maximum, but constitutional limits
  - Where does the money go?
- Each day's continuing violation may be a separate and distinct offense.
- "[A]ppropriate" equitable remedy issued by court



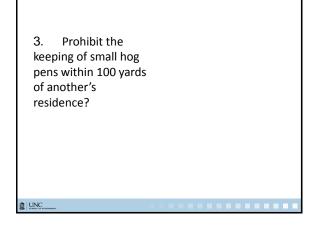
- If unlawful condition or use of real property, local gov't may seek injunction or order of abatement from court.
- Local government may use combination of remedies to enforce ordinance unless ordinance provides otherwise.
- Liens may be available for cost of nuisance abatement.
- Ordinance Enforcement Basics

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2. Set the rates charged by taxicab operators?





4. Mandate that junkyard be fenced for purely aesthetic reasons?

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5. Limit the size of soft drinks sold in restaurants or convenience stores?

