

The Police Power: General Ordinance Authority of Counties and Cities

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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" doesn't 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).



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- 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

- 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 health, safety, or welfare of its citizens and the peace and dignity of the [city or county], and [to] define and abate nuisances.” [G.S. 153A-121, 160A-174](#).

- For local gov'ts, the police power = general ordinance-making authority.
- [Chapter 153A, Article 6](#) (police power of counties)
- [Chapter 160A, Article 8](#) (police power of cities)



We're **not** talking about:

- Zoning Authority under Chapter [153A, Article 18](#), or [Chapter 160A, Article 19](#)
- Minimum Housing Codes under [Chapter 160A, Article 19](#)
- Repair, Closing, Demolition of Nonresidential Structures under [Chapter 153A, Article 18](#), or [Chapter 160A, Article 19](#)
- Nuisance Abatement Actions under [Chapter 19, Article 1](#)



- Enumeration of powers in Chapter 153A, Article 6 and 160A, Article 8 is not exclusive. [G.S. 153A-124, 160A-177.](#)

III. Scope of Police Power

- Dillon's Rule

- [G.S. 160A-4](#): Provisions of Chapter 160A and of city charters "shall be broadly construed and grants of power shall be construed to include any additional and supplemental powers . . . reasonably necessary or expedient to carry them into execution and effect."
- [G.S. 153-4](#) 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 [160A-174](#) must be interpreted broadly.
- Broadly construed, [160A-174](#) encompasses power to require posted towing notices and acceptance of different methods of payment.



- Broadly construed, [160A-174](#) 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?

- [*King v. Town of Chapel Hill: The Supreme Court Issues a Major Decision on the Police Power of Local Governments \(Part 1\)*](#)
- [*King v. Town of Chapel Hill: The Supreme Court Issues a Major Decision on the Police Power of Local Governments \(Part 2\)*](#)

IV. Exercising Police Power

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



- Where do police power ordinances apply?

- 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



- *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

- [G.S. 160A-175](#) & [153A-123](#)
- 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?

- 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](#)

May a City Ordinance . . .

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3. Prohibit the keeping of small hog pens within 100 yards of another's residence?

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

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

