

MEMORANDUM

To: City Council and City Manager

From: Town Attorney

Date: 29 November 2021

Re: SL 2021-138 Compliance – Oak Ridge Code of Ordinances

The General Assembly adopted Session Law (SL) 2021-138, which requires in pertinent part that criminalization of local ordinance violations appear expressly within such ordinances and that also prohibits criminalization altogether in certain enumerated instances. The pertinent language of the session law, which is attached, appears in this omnibus legislation on pages 12-13, highlighted, and reads:

“(b) ~~Unless the Council shall otherwise provide, Except for the types of ordinances listed in subsection (b1) of this section, violation of a city ordinance is~~ may be a misdemeanor or infraction as provided by ~~G.S. 14-4. G.S. 14-4 only if the city specifies such in the ordinance.~~

The compliance deadline (effective date) for these pertinent provisions of the session law is 1 December 2021. This means that noncompliant local ordinances, while not invalidated generally, cannot be enforced with misdemeanor criminal prosecutions against violations occurring after that date.

I have reviewed the Oak Ridge ordinances (general, and land-development) for compliance with SL 2021-138 and report as follows. Note, that omitted chapters do not contain any applicable enforcement or criminal-remedy provisions.

Chapter 30 – Land development. (“Oak Ridge Development Chapter”)

This chapter was enacted pursuant to former Article 19 of Chapter 160A of the General Statutes, now recodified by Chapter 160D and re-enacted by localities including Oak Ridge by or before 1 July 2021.

SL 2021-138 prohibits criminalization of any ordinance provisions adopted pursuant thereto, with the exception of unsafe building violations, by the following session law provision: “(b1) No ordinance of the following types may impose a criminal penalty: (1) Any ordinance adopted under Article 19 of this Chapter, Planning and Regulation of Development, or its successor, Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings.”

Therefore, the current provision in Sec. 30-254 “Remedies for violations” and applicable to the enforcement of “the provisions of this chapter” (the Town’s comprehensive development ordinance, i.e. the chapter and all its provisions) is over-broad and violates the new law, where in Subsection (7) it provides “(7) *Criminal penalties. Any violation of this chapter shall be a misdemeanor or infraction as provided by G.S. 14-4, subject to a maximum fine of \$500.00, and may be prosecuted in the the (sic) appropriate division of the general court of justice.*” (My emphasis.) In my opinion, this language is compliant as written. In

order to maintain at least the ability to deal criminally with unsafe building conditions, I recommend modifying the current provision so that this subsection reads: “Any violation of this chapter pertaining to unsafe building conditions shall be a misdemeanor or infraction as provided by G.S. 14-4, subject to a maximum fine of \$500.00, and may be prosecuted in the appropriate division of the general court of justice.”

A more localized enforcement provision within Chapter 30, applicable to Art. X

“Environmental regulations,” and specifically Div. 4 “Illicit and Illegal

Discharges”, is Sec. 30-1300(6) which provides: “(6) *Criminal penalties. Any*

violation of this *chapter* shall be a misdemeanor or infraction as provided by G.S. 14-4. Each violation shall be subject to a fine not to exceed \$500.00.” (<y emphasis.) I think this provision including the section’s lead-in sentence was improvidently drafted to begin with, in that in each instance it purports to apply to the entire development ordinance (chapter) but was certainly intended to apply just to this division (regulating illicit and illegal discharges of pollutants into local waters. To come into compliance with SL 2021-138, I recommend repealing this Subsection 30-1300(6) and changing the word “chapter” to “division” in the section’s lead-in section so that it reads: “Any or all of the following procedures may be used to enforce the provisions of this chapter division.”