

## 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 6** – Animal control ordinance.

Chapter 6 is a comprehensive set of provisions constituting the Town’s “animal control ordinance,” and outlawed behavior therein is criminalized in the “Penalties” section, Sec. 6-27(1). I read the statutory change facially and do not construe this to mean that *every* section of every ordinance that outlaws a given

action or omission must state that such is a misdemeanor, *if* there is a comprehensive criminalization provision as indicated.

### **Chapter 18** – Emergency management.

Sec. 18-15(d) states: “(d) A violation of this section shall be punishable as provided by G.S. 14-288.8.7.” This appears to be an erroneous cross-reference to G.S. 14-288.8, “Manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of weapon of mass death and destruction; exceptions” and its Subsec. (d), providing “(d) Any person who violates any provision of this section is guilty of a Class F felony.” I think this is an improvident local provision, since a municipality to my knowledge cannot make a local violation a felony. I recommend deleting this subsection altogether and adding a section (d) to Sec. 18-1, to provide that any violation of this chapter shall constitute a misdemeanor punishable pursuant to GS 14-4. This misdemeanor criminalization would help local law enforcement to enforce these provisions, if such an emergency occurred.

### **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 Rodge 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.”

### **Chapter 36 – Parks and recreation.**

Sec. 36-62 of Art. 111 of this ordinance, “Sex Offenders In Parks And Recreational Facilities,” provides: “Violation of this article shall be punishable by a fine of \$500.00 and/or incarceration for up to 30 days. Given the new requirement, the implicit reference to GS 14-4 should be made express, and I recommend rewriting this to read: “Violation of this article shall constitute a misdemeanor pursuant to G.S. 1404 punishable by a fine of \$500.00 and/or incarceration for up to 30 days.”

### **Chapter 38 – Offenses and Miscellaneous Provisions:**

Art II --Noise ordinance. Sec. 38-31 “Annoying and disturbing noises” subsection (c)(5) provides: “(5) Violators may also be prosecuted under the provisions of G.S. 14-4 for a misdemeanor criminal offense punishable by a fine of not more than \$500.00 and/or imprisonment as designated for a class 3 misdemeanor.” This is compliant as written.

### **Chapter 42 – Traffic and Motor vehicles.**

Art. II parking restrictions/fire lane regulation by this ordinance is already expressly decriminalized by Sec. 42-45(a), which provides “(a)A violation listed in section 42-42 shall not constitute a misdemeanor or infraction punishable under G.S. 14-4, but instead shall be assessed a civil penalty as fixed by section 42-46 of this division and the civil remedies provided by G.S. 160A-175.”

Art IV Roadway solicitation is criminalized by the following provision of Sec. 42-71: “(c) Any person adjudged in violation of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$50.00, or imprisoned for not more than seven days.” Given the new requirement, the implicit reference to GS 14-4 should be made express, and I recommend rewriting this to read: “(c) Any person adjudged in violation of this section shall be guilty of a misdemeanor pursuant to G.S. 14-4 and upon conviction shall be fined not more than \$50.00, or imprisoned for not more than seven days.”

#### **Chapter 46 – Utilities.**

Art II - Water system ordinance: Sec. 46-29(c) provides: “(c) *Destruction of system prohibited.* The malicious, willful, or negligent breaking, damaging, destroying, uncovering, defacing of or tampering with any structure, appurtenance or equipment which is a part of the system is prohibited. Any person convicted of violating this subsection shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in the amount not exceeding \$500.00 for each violation.” Given the new requirement, the implicit reference to GS 14-4 should be made express, and I recommend rewriting this to read: “(c) *Destruction of system prohibited.* The malicious, willful, or negligent breaking, damaging, destroying, uncovering, defacing of or tampering with any structure, appurtenance or equipment which is a part of the system is prohibited. Any person convicted of violating this subsection shall be guilty of a misdemeanor pursuant to G.S. 14-4, and upon conviction thereof shall be fined in the amount not exceeding \$500.00 for each violation.”

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