

**Town of Dallas
Agenda
NOVEMBER 23, 2021
5:00 PM
BOARD OF ALDERMEN – WORK SESSION MEETING
Rick Coleman, Mayor**

Allen Huggins

Frank Milton

Darlene Morrow

Jerry Cearley, Mayor Pro-Tem

E. Hoyle Withers

ITEM SUBJECT

Pages

- 1. Pledge of Allegiance to the Flag**
- 2. Approval of Agenda with Additions Or Deletions**
- 3. New Business**
- 4. Banners for Gaston County Anniversary** 2
- 5. Special Events Fee** 6
- 6. SB300 Implementation** 7

TOWN OF DALLAS, NORTH CAROLINA

REQUEST FOR BOARD ACTION

DESCRIPTION: Gaston County 175th Anniversary

AGENDA ITEM NO. 3A

MEETING DATE: 11/23/2021

BACKGROUND INFORMATION:

Gaston County is celebrating its 175th Anniversary in December with a celebration on December 21st at 4:00 pm at the Rotary Centennial Pavilion. The County is looking at placing banners in communities across the county. These banners would be vertical (attached to light posts) or large horizontal banners. The vertical banners would be 24" x 48" and the horizontal banners would be 6' x 3'.

This discussion would be to determine if there are any places around Dallas that the County could place some banners.

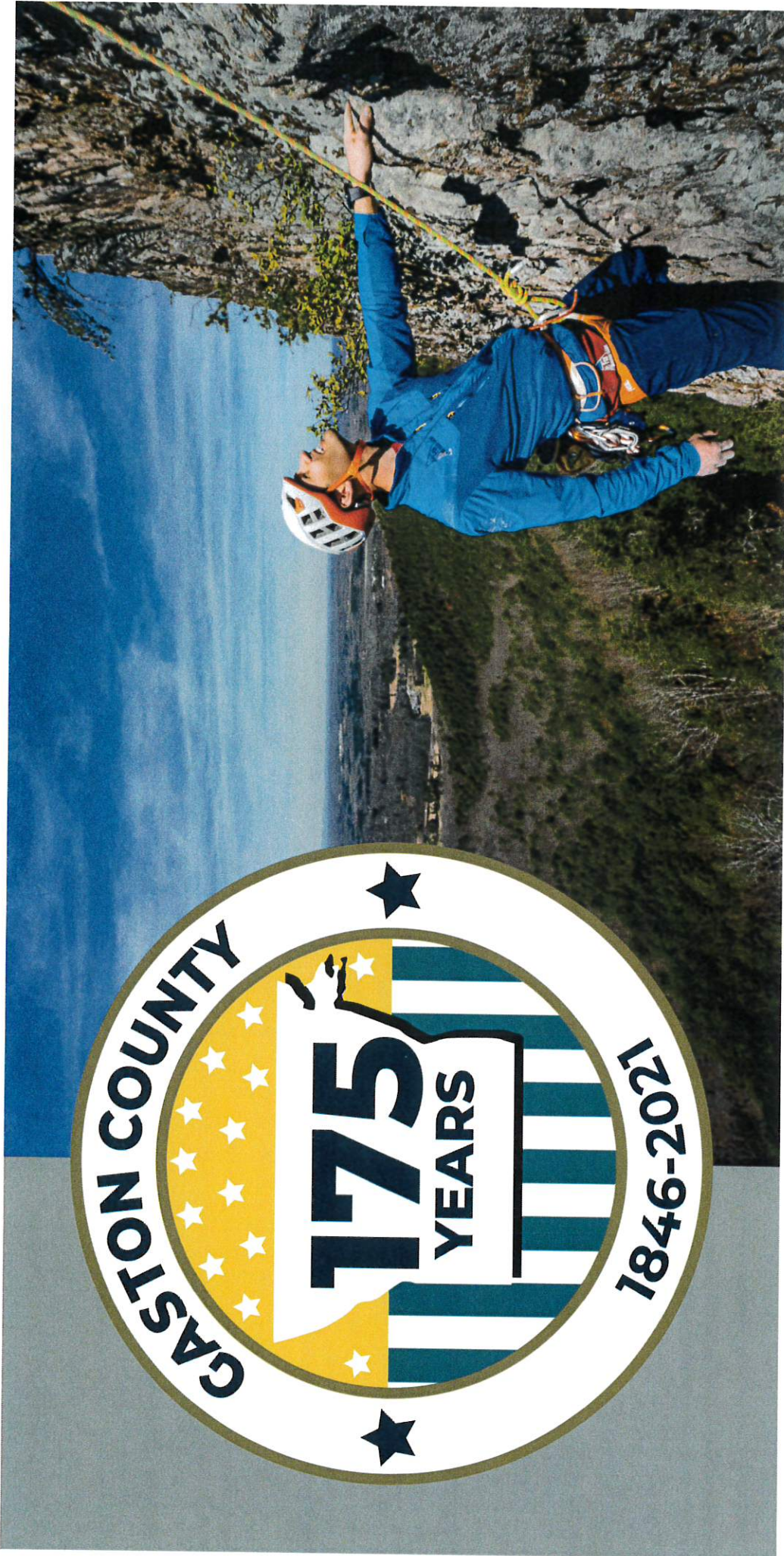
MANAGER RECOMMENDATION:

BOARD ACTION TAKEN:





HORIZONTAL BANNER



TOWN OF DALLAS, NORTH CAROLINA

REQUEST FOR BOARD ACTION

DESCRIPTION: Special Events Fee

AGENDA ITEM NO. 3B

MEETING DATE: 11/23/2021

BACKGROUND INFORMATION:

As the Town is seeing an increase in the number and frequency of special events requests, it is appropriate to discuss assessing a fee to cover the costs incurred by the Town in support of these private events. Many of the events being requested are for the benefit or profit of specific entities.

Costs are incurred in delivering, picking up, and emptying trash cans; delivery, setup, and pickup of barricades; area clean up; and other activities associated with planning and monitoring these events.

This discussion is to determine the best method, if desired, to assess a fee for the use of Town services in conjunction with private special events.

MANAGER RECOMMENDATION:

BOARD ACTION TAKEN:

TOWN OF DALLAS, NORTH CAROLINA

REQUEST FOR BOARD ACTION

DESCRIPTION: SB300 Implementation

AGENDA ITEM NO. 3C

MEETING DATE: 11/23/2021

BACKGROUND INFORMATION:

On September 2, 2021, Governor Roy Cooper signed into law new legislation designed to drive Criminal Justice Reform, S.L. 2021-138 (SB300). This legislation contains several main provisions that will affect Town ordinances and procedures, that we will be addressing.

Attached is information from the NCLM and School of Government summarizing the main provisions.

MANAGER RECOMMENDATION:

BOARD ACTION TAKEN:

PREPARING TO IMPLEMENT CRIMINAL JUSTICE REFORM LEGISLATION IN TOWNS AND CITIES

October 2021

Gov. Roy Cooper on September 2, 2021 signed into law a wide-ranging piece of legislation that creates new databases, requires additional background checks and decriminalizes certain local government ordinances. This document is designed to highlight a few provisions in Senate Bill 300 (S.L. 2021-138) Criminal Justice Reform that deserve particular attention from local government attorneys, law enforcement agencies and administrators. Some of the changes may require town councils to adopt or amend ordinances; some provisions may require local governments to create new databases; and other provisions may require that new practices and processes be established. This guidance document highlights the main changes in the legislation. However, this is not legal advice and towns and cities are encouraged to read the entire bill and consult their staff attorneys or contract attorneys to determine the changes they need to implement.

A. DECRIMINALIZATION OF CERTAIN ORDINANCES (PART XIII):

PART XIII of S.L. 2021-138, titled Decriminalization of Certain Ordinances, removes the current presumption that all local ordinances may be enforced criminally (G.S.160A-175) and states that ordinances may be enforced criminally as provided in G.S. 14-4 “only if the city specifies such in the ordinance.” It further states: “Notwithstanding G.S. 160A-75, no ordinance specifying a criminal penalty may be enacted at the meeting in which it is first introduced.” It also includes a list of statutory sections in which cities cannot adopt ordinances with criminal enforcement. That list of topic areas are as follows: planning and regulation of development; stream clearing programs; regulating businesses and trades; outdoor advertising; solar collectors; cisterns and rain barrels; taxis; setback lines; curb cut regulations and ordinances regulating trees. The legislation specifies that these changes *go into effect Dec. 1, 2021*, so towns and cities have a limited time frame in which to respond to these changes.

To prepare for the change in the law, towns and cities should consider taking the following steps:

- i. Determine if you have ordinances which impose potential criminal penalties.
- ii. Make a list of ordinances for which you wish to retain criminal enforcement authority.
- iii. Check to make sure the list does not include ordinances that fall under the topic areas disallowed by the legislation.
- iv. Check to make sure the ordinance language includes clear criminal authority.
- v. If these ordinances do not have clear criminal authority, have town council adopt a new ordinance or a statement that comprises specific language in the ordinances that state they can be criminally enforced.
- vi. For ordinances that will not be enforced criminally, establish administrative capabilities to issue and collect civil citations or fines for violations and provide for an appeals process. **PRACTITIONER'S TIP:** For arrestable offenses, judicial officials have the authority to obtain personal identification information for an alleged violator. In civil matters, where only a citation or fine can be issued, obtaining the identity of the alleged violator may be difficult or practically impossible.
- vii. If town councils need to, adopt any new ordinances or changes to ordinances by Dec. 1, 2021, the date Part XIII of S.L. 2021-138 goes into effect. **PRACTITIONER'S TIP:** Since the legislation requires the criminal authority to be specified in "the ordinance," towns and cities should carefully specify criminal enforcement in each applicable ordinance.
- viii. Note that ordinances with criminal enforcement authority cannot be adopted in the first meeting that it is introduced.

B. CREATING POLICIES, DATABASES AND FOLLOW UP PLANS

Certain provisions require the creation of processes whereby law enforcement agencies must track specific types of incidents and report those to a statewide database. Practitioners say it is important that once this information is collected, it be properly retained so that confidentiality requirements are maintained, and that law enforcement officers (LEOs) be given the opportunity to challenge their inclusion if required by law. Once the data has been collected, practitioners also recommend that supervisors keep track of these

incidents, perhaps through an automated alert system, and supervisors create Action Plans to help individual officers avoid repeated occurrences. Setting up the database and tracking the data may be required by the new law but acting on the information may be a best practice to avoid being seen as having failed to follow through on early warning signs.

Under this legislation at least three sets of data must be collected:

1. Critical Incident Database - A new statewide database of critical incidents is established by this legislation. Critical incident is defined as “an incident involving any use of force by a law enforcement officer that results in death or serious bodily injury to a person.” The information collected in this database stays confidential. While the legislation requires law enforcement agencies to report “critical incidents,” involving police officers, it also provides the officer a right, prior to being placed in the database, to request a hearing in Superior Court for a determination of “whether the officer’s involvement was properly placed in the database.” Agencies may want to create a process whereby an officer is informed prior to their names being submitted to this database, and the officer be informed of an opportunity to exercise a right to request a hearing in Superior Court. **PRACTITIONER’s TIP:** It should be noted that the right to a hearing is limited to whether the officer’s involvement was properly placed in the database, not the appropriateness of the officer’s actions during the incident. Also, if the incident results in disciplinary action there may also be a need for a name clearing hearing so these two processes may overlap and possibly conflict. **PRACTITIONER’s TIP:** When advising an officer regarding a hearing, consider the risks of the process in the event of future litigation.
2. Early warning system - Every agency that employs law enforcement is required to develop a confidential early warning system for law enforcement including at minimum instances of use of force, discharge of firearm, vehicle collisions and citizen complaints (Part VIII). The system’s essential purpose is to identify possible problem officers, not to collect data. Many small agencies could implement an early warning system manually. But for some agencies, this could be a time-

consuming effort, requiring the creation of a computerized system that collects the information, creates an alert at a particular threshold of reports and ultimately triggers a supervisor to place the officer on a remedial plan. Some system to monitor the data collected and alert a supervisor to repeated offences may be needed to avoid future claims that the agency failed to properly supervise such officers. The “use of force” information to be collected can be individualized to each agency, possibly including instances where handcuffs were placed on an individual and the number of minor vehicle accidents. The data collected under this database stays confidential. This section is effective Dec. 1, 2021 and applies to actions and behaviors on or after that date.

3. Duty to intervene and report excessive use of force

Part XVI of the legislation creates a duty for LEOs to intervene and report an excessive use of force by a LEO. This may require agencies that do not have such a policy to adopt one. In addition, agencies should also create a reporting system likeones for critical incidents and the early warnings system. Agencies that do not evaluate their officers’ use of force open themselves up for negligent retention and supervision claims. Agencies should evaluate the performance of their officers who consistently trigger alerts to determine what measures should be taken to correct any noted deficiencies in the officer’s performance, including but not limited to, education, additional training, and disciplinary action.

C. RETAINING AND USING THE DATA

Even while they collect additional data required by this legislation, personnel departments should remember that G.S. 160A-168 requires personnel data to be kept confidential unless it is exempt under a specific exemption. In particular, consider: “section (c4). Even if considered part of an employee’s personnel file, the following information regarding any sworn law enforcement officer shall not be disclosed: (3) Any identifying information as defined in G.S. 14-113.20.”

D. OTHER PROVISIONS OF INTEREST THAT MAY REQUIRE AGENCIES TO PREPARE PROCESSES INCLUDE THE FOLLOWING:

- Decertification - Part I of the bill creates a public database of LEO certification suspensions and revocations to be established by the N.C. Criminal Justice Education and Training Standards Commission.
- Applicants for law enforcement positions and current law enforcement will be required to provide fingerprints, and agencies will have to submit those to the SBI for a federal and state background check by June 23, 2023. (Part II)
- Applicants for law enforcement positions will have to undergo psychological screening and local governments will have to foot the bill for the screening. (Part VI).
PRACTITIONER'S TIP: Consider the costs of such screenings and include those costs when preparing budget estimates.
- Law enforcement will need to report Giglio notifications in writing to the statewide Criminal Justice Standards Division. Those required to report these letters include the individual LEO, the agency head and a judge that issues the notification. (Part IV)
- Changes to the body cam recording viewing statute (Part XXI): No later than three business days from receipt of the notarized form - provided by the law enforcement agency - requesting immediate disclosure of footage in a case involving death or serious bodily injury, a law enforcement agency shall file a petition in the Superior Court in any county where any portion of the recording was made for issuance of a court order regarding disclosure of the recording. Any person who willfully records any recording disclosed pursuant to this subsection shall be guilty of a Class 1 misdemeanor. Any person who knowingly disseminates a recording disclosed pursuant to this subsection shall be guilty of a Class I felony. **PRACTITIONER'S TIP:** Check to ensure the law enforcement agency has a supply of high-capacity thumb drives where hours of footage can be downloaded for quick transmittal to the Superior Court judge.
- Part X of the legislation now adds the Governor to the list of individuals who may ask the SBI to investigate deaths due to use of force by a law enforcement officer.



Coates' Canons Blog: Legislature Decriminalizes Local Ordinances

By Frayda Bluestein

Article: <https://canons.sog.unc.edu/legislature-decriminalizes-local-ordinances/>

This entry was posted on October 07, 2021 and is filed under Board Member Powers & Authority, Enforcement, Legislative Decisions, Ordinances & Police Powers, Police Power Regulations

For some time, under North Carolina law, violations of city and county ordinances have been treated as misdemeanors or infractions unless the ordinance explicitly said that they were not. Starting in 2018, the General Assembly embarked on a project to decriminalize local government ordinances. Some of you may remember the call for a list of your ordinances that were criminally enforceable to be sent to two joint legislative committees. This was no small feat, as described here and here. The law at the time (GS 153A-123, counties; 160A-175, cities) held that unless the city or county provided otherwise, a violation of an ordinance was a misdemeanor or infraction as provided by G.S. 14-4. So, by default, if city or county didn't take action otherwise, ordinances were enforced criminally. The result for some units, is that the majority of governments' authority to enforce ordinances criminally. This year the legislature removed the default criminal penalty, and modified local governments' authority to enforce ordinances criminally. This blog post summarizes the changes. These provisions become effective on December 1, 2021.

The changes were part of an omnibus law focusing on law enforcement and policing issues. This part is at [Part XIII] of the law.

The first part of the provision is a rewrite of the authority under GS 153A-123 and 160A- 175 regarding ordinance enforcement. These parallel sections now read:

Except for the types of ordinances listed in subsection (b1) of this section, violation of a [county/city] ordinance may be a misdemeanor or infraction as provided by G.S. 14-4 only if the [county/city] specifies such in the ordinance. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4. Notwithstanding G.S. 153A-45, no ordinance specifying a criminal penalty may be enacted at the meeting in which it is first introduced.

The law also adds a new subsection (b1) to the statutes, which lists types of ordinances that local governments are prohibited to enforce criminally. These lists are set out at the bottom this blog.

To implement these changes, cities and counties will have to review each ordinance and make any changes, specifically those that they want to continue as enforced criminally, and to comply with the prohibitions listed under (b1). These changes must be specified and modified in each ordinance, and these amendments must be done by ordinance. See this blog post for more about amending ordinances.

Finally, the legislature revised GS 14-4, by adding a new subsection (c) provision as set out below.

"§ 14-4. Violation of local ordinances misdemeanor.

(a) Except as provided in subsection (b) or (c) of this section, if any person shall violate an ordinance of a county, city, town, or metropolitan sewerage district created under Article 5 of Chapter 162A, he shall be guilty of a Class 3 misdemeanor and shall be fined not more than five hundred dollars (\$500.00). No fine shall exceed fifty dollars (\$50.00) unless the ordinance expressly states that the maximum fine is greater than fifty dollars (\$50.00).

(b) If any person shall violate an ordinance of a county, city, or town regulating the operation or parking of vehicles, he shall be responsible for an infraction and shall be required to pay a penalty of not more than fifty dollars (\$50.00).



(c) A person may not be found responsible or guilty of a local ordinance violation punishable pursuant to subsection (a) of this section if, when tried for that violation, the person produces proof of compliance with the local ordinance through any of the following:

- (1) No new alleged violations of the local ordinance within 30 days from the date of the initial alleged violation.*
- (2) The person provides proof of a good-faith effort to seek assistance to address any underlying factors related to unemployment, homelessness, mental health, or substance abuse that might relate to the person's ability to comply with the local ordinance.*

Here are the Lists of ordinances that may not be enforced criminally

For Counties:

153A-12 (b1): No ordinance of the following types may impose a criminal penalty:

- (1) Any ordinance adopted under Article 18 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;
- (2) Any ordinance adopted pursuant to G.S. 153A-134, Regulating and licensing businesses, trades, etc.;
- (3) Any ordinance adopted pursuant to G.S. 153A-138, Registration of mobile homes, house trailers, etc.;
- (4) Any ordinance adopted pursuant to G.S.153A-140.1, Stream-clearing programs
- (5) Any ordinance adopted pursuant to G.S. 153A-143, Regulation of outdoor advertising or, its successor, G.S. 160D-912, Outdoor advertising;
- (6) Any ordinance adopted pursuant to G.S. 153A-144, Limitations on regulating solar collectors or, its successor, G.S. 160D-914, Solar collectors;
- (7) Any ordinance adopted pursuant to G.S. 153A-145, Limitations on regulating cisterns and rain barrels;
- (8) Any ordinance regulating trees.

For Cities:

GS 160A-175(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;
- (2) Any ordinance adopted pursuant to G.S.160A-193.1, Stream-clearing programs;
- (3) Any ordinance adopted pursuant to G.S. 160A-194, Regulating and licensing businesses, trades, etc;
- 4) Any ordinance adopted pursuant to G.S. 160A-199, Regulation of outdoor advertising or, its successor, G.S. 160D-912, Outdoor advertising;
- (5) Any ordinance adopted pursuant to G.S. 160A-201, Limitations on regulating solar collectors or, its successor, G.S. 160D-914, Solar collectors;



- (6) Any ordinance adopted pursuant to G.S. 160A-202, Limitations on regulating cisterns and rain barrels;
- (7) Any ordinance adopted pursuant to G.S. 160A-304, Regulation of taxis;
- (8) Any ordinance adopted pursuant to G.S. 160A-306, Building setback lines;
- (9) Any ordinance adopted pursuant to G.S. 160A-307, Curb cut regulations

- (10) Any ordinance regulating trees.

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_14/GS_14-4.html
- www.ncleg.gov/Sessions/2021/Bills/Senate/PDF/S300v8.pdf