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## Coates' Canons Blog: New Ordinance Report Requirement – Advice on Complying

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In June the General Assembly enacted Session Law 2018-69, which directs municipalities, counties, and metropolitan sewerage districts to submit ordinance-related information to two legislative committees by December 1, 2018. This blog post examines the law and considers how local government units may comply with its provisions.

### Session Law 2018-69 – The Requirements

Session Law 2018-69 (House Bill 379) is entitled “An Act to Assist the Criminal Law Recodification Working Group.” While the General Assembly has yet to enact legislation creating the Working Group or specifying its duties, the Act is an initial step in a process that could ultimately lead to an overhaul of North Carolina’s criminal laws. The purpose of the overhaul would be to provide the state with a streamlined and comprehensive criminal code, something the state now lacks, in part because so many government bodies at the state and local level have the power to create criminal offenses. (For more background on the recodification effort, see [here](#) and [here](#).)

The first section of the Act concerns state agencies. The second section is addressed to the Administrative Office of the Courts.

Section 3 of the Act covers every municipality, county, and metropolitan sewerage district (“MSD”) that has ordinances creating offenses punishable as misdemeanors under G.S. 14-4(a). It directs each such unit to prepare “a list of applicable ordinances with a description of the conduct subject to criminal punishment in each ordinance” and to submit the list to two legislative committees:

- the Joint Legislative Administrative Procedure Oversight Committee and
- the Joint Legislative Oversight Committee on Justice and Public Safety.

The deadline for submission is December 1, 2018.

### When Does G.S. 14-4(a) Apply?

To compile their respective lists, units must be able to identify which of their ordinances create criminal offenses pursuant to G.S. 14-4(a). The basic rule is that G.S. 14-4(a) makes every ordinance violation a Class 3 misdemeanor and subjects the offender to a fine of not more than \$500 unless one of two exceptions applies.

- A municipal or county governing board may expressly provide that the violation of an ordinance will not result in a misdemeanor. G.S. 153A-123(b); 160A-175(b). We often refer to such action as *decriminalizing* an ordinance.
- Under G.S. 14-4(b), the violation of an ordinance regulating the operation or parking of vehicles is an infraction, not a misdemeanor. (An infraction is “a noncriminal violation of law not punishable by imprisonment.” G.S. 14-3.1(a).)

State law grants each MSD the authority to adopt ordinances regulating the discharge of sewage into any sewerage system owned or operated by the MSD. G.S. 162A-69(13a). The misdemeanor provisions in G.S. 14-4(a) expressly apply to violations of MSD ordinances.

The bottom line? When read together with G.S. 14-4 and other pertinent statutes, Section 3 of the Act requires units to list all of their ordinances in their reports to the joint committees except for those ordinances that have been decriminalized or that regulate the operation or parking of vehicles.

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## Complying with Session Law 2018-69

Local government units will have to make some assumptions about legislative intent as they attempt to comply with Section 3 of the Act.

Electronic or Paper? Section 3 doesn't indicate whether units should send their ordinance lists by mail or electronically. Although this apparently leaves each unit free to use whatever written medium it prefers, I have been told by a committee staff member that electronic reports are preferable.

Level of Detail. Beyond mandating that a unit describe the conduct prohibited by each ordinance on its list, Section 3 offers no guidance regarding the level of detail units should incorporate into their submissions to the joint committees. It seems reasonable to assume that relatively brief descriptions will suffice. If the legislature had wanted units to supply comprehensive information, it could have ordered them to send complete copies of their ordinances. Additionally, because it's so common for units to post their ordinances online, many – if not most – units will likely direct the committees' attention to the webpages on which the full text of their ordinances is available.

Even assuming that brief descriptions can satisfy Section 3, I think the length and complexity of many ordinances will make it difficult for units to decide just how much detail to include in their descriptions. I'll go out on a limb and offer an example of a description that I hope the committees would find acceptable. The noise ordinance for my hometown is more than 16 pages long and is divided into two parts that together comprise 20 sections. Part one prohibits individuals from emitting sounds in excess of designated decibel limits. The maximum decibel limits vary based on the time of day and whether the emission occurs in a residential, a commercial, or a manufacturing district. Part one also contains a general provision that makes it unlawful for anyone to "emit any unreasonably loud, annoying, frightening, loud and disturbing or unnecessary noise." Another section lists 18 prohibited noises, one of which is "[t]he use of any gong or siren upon any vehicle other than police, fire, ambulance or other emergency vehicles." Other provisions ban loudspeakers and other forms of sound magnification on city streets. Many of the restrictions in part one are subject to exceptions.

Part two of the ordinance imposes permit and other requirements on events that constitute "amplified entertainment" or "live entertainment." Many of the provisions don't directly concern noise. One provision, for instance, mandates that any applicant for an amplified/live entertainment permit keep the exterior lighting of the parking area "at an intensity of at least one foot-candle of light on the parking surface during the hours of darkness."

Obviously, the noise ordinance could be summarized in a multitude of ways, with the level of detail being a major variable. If I had to describe the ordinance for the joint committees, I'd probably write something like this:

*Chapter 14.1 – Noise: Prohibits (1) the emission of noises in excess of specified decibel levels that vary based on time of day and location; (2) unreasonably loud, annoying, frightening, loud and disturbing or unnecessary noises; and (3) designated noises, such as the use of gongs or sirens by non-emergency vehicles. Restricts the use of loudspeakers and other forms of sound magnification on city streets. Imposes noise-related restrictions and other requirements on amplified or live entertainment.*

Here I must add that I don't have any inside information about what the joint committees expect to see. It may be that they anticipate receiving lists with exhaustive descriptions of prohibited conduct. If that's the case, then my sample description misses the mark. *Caveat lector.*

Recipients. The usual practice is to send reports intended for legislative committees to the committee chairs. The joint committee hyperlinks found earlier in this blog post will take readers to webpages with links to the contact information for the co-chairs of the joint committees. Given that North Carolina comprises 100 counties and over 500 municipalities, the co-chairs are going to be receiving hundreds of ordinance lists as units comply with Session Law 2018-69. To help ensure that nothing slips through the cracks, Susan Sitze, legal counsel to one of the joint committees, has requested that units copy her at [susan.sitze@ncleg.net](mailto:susan.sitze@ncleg.net).

Deadline. Section 3 directs units to "submit" their lists to the joint committees "no later than December 1, 2018." It's not clear whether this means that the committees must receive the lists by December 1 or that units must send them by



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December 1. If a unit submits its list by e-mail, the difference is largely irrelevant. If a unit chooses to mail its list, the more committee-friendly approach would be to do so in time for it to arrive by December 1.

Attorney Consultation. Units should consult their attorneys if they are uncertain about whether particular ordinances belong on their lists. Units may likewise want to seek legal advice regarding the adequacy of their ordinance descriptions.

## Links

- [www.ncleg.net/EnactedLegislation/SessionLaws/HTML/2017-2018/SL2018-69.html](http://www.ncleg.net/EnactedLegislation/SessionLaws/HTML/2017-2018/SL2018-69.html)
- [www.sog.unc.edu/sites/www.sog.unc.edu/files/articles/Criminal%20Code%20Recodification%20for%20North%20Carolina%203.10.2017.pdf](http://www.sog.unc.edu/sites/www.sog.unc.edu/files/articles/Criminal%20Code%20Recodification%20for%20North%20Carolina%203.10.2017.pdf)
- [www.johnlocke.org/update/legislative-victory-gets-n-c-closer-to-an-effective-efficient-and-fair-criminal-code/](http://www.johnlocke.org/update/legislative-victory-gets-n-c-closer-to-an-effective-efficient-and-fair-criminal-code/)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-4](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-4)
- [www.ncleg.net/gascripts/Committees/committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing\\_472](http://www.ncleg.net/gascripts/Committees/committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing_472)
- [www.ncleg.net/gascripts/Committees/committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing\\_427](http://www.ncleg.net/gascripts/Committees/committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing_427)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-123](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-123)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-175](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-175)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-3.1](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-3.1)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=162a-69](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=162a-69)
- [library.municode.com/nc/lumberton/codes/code\\_of\\_ordinances?nodeId=CD\\_PART\\_IIGEOR\\_CH14.1NO](http://library.municode.com/nc/lumberton/codes/code_of_ordinances?nodeId=CD_PART_IIGEOR_CH14.1NO)