Coates' Canons Blog: Ordinance Enforcement Basics

By Trey Allen

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I am often asked about the steps that local governments may take to enforce their ordinances. This blog post describes the basic enforcement options available to cities and counties. It is adapted from a section of my chapter *General Ordinance Authority* in County and Municipal Government in North Carolina (2d ed. 2014). (Shameless plug: The chapter contains lots of other useful information about the general ordinance authority of local governments.)

The primary statutes setting out the enforcement powers of local governments are G.S. 160A-175 (cities) and G.S. 153A-123 (counties). Collectively, they provide cities and counties with an array of criminal and civil enforcement mechanisms.

Criminal Actions

The general rule is that a person who violates a city or county ordinance commits a Class 3 misdemeanor and risks a fine of not more than $500.00. G.S. 14-4; 153A-123(b); 160A-175(b). (The fine for an ordinance violation may not exceed $50 unless the ordinance expressly provides for a greater fine.) There are two exceptions to this rule.

- If the ordinance regulates the operation or parking of vehicles, a violator is responsible for an infraction rather than a misdemeanor and any fines assessed may not exceed $50.00. (An infraction is "a noncriminal violation of law not punishable by imprisonment." G.S. 14-3.1(a).)
- A city or county governing board may expressly provide that the violation of an ordinance will not result in a misdemeanor or infraction; alternatively, an ordinance may set as the maximum punishment some term of imprisonment or fine less than the statutory maximum. G.S. 153A-123(b); 160A-175(b).

Only a law enforcement officer or person expressly authorized by statute may issue a citation requiring an individual to answer to a misdemeanor charge or infraction. G.S. 15A-302; David M. Lawrence, "*Criminal versus Civil Enforcement of Local Ordinances – What's the Difference?,*" Local Government Law Bulletin, No. 130 (Dec. 2012) (noting that practical effect of G.S. 15A-302 is to limit the issuance of criminal citations to sworn law enforcement officers). Proving that a misdemeanor or infraction has been committed requires local officials to secure the assistance of the district attorney's office to prosecute, and the violation must be proved "beyond a reasonable doubt."

It is possible, at least in some circumstances, for a city or county to pursue both criminal and civil enforcement actions against an offender for the same ordinance violation. *School Directors v. City of Asheville*, 137 N.C. 503, 510 (1905) ("A party violating a town ordinance may be prosecuted by the State for the misdemeanor and sued by the town for the penalty.").

Civil Actions

Local governments have the ability to enforce their ordinances through any or all of several civil measures, including civil penalties and court orders directing offenders to comply with particular ordinances. In most cases, these measures cannot be pursued unless the ordinance at issue identifies them as potential methods of enforcement. (Rather than include enforcement language in every ordinance, some cities and counties have "remedies" sections in their codes of ordinances that cross-reference various ordinances and specify which remedies apply to each.) The authority to issue civil citations for ordinance violations may be delegated to personnel who are not law enforcement officers.

Civil Penalties

To subject violators of an ordinance to civil penalties under G.S 160A-175 or 153A-123, a local governing board probably

has to specify the exact amount to be charged per violation. David M. Lawrence, "*Civil Penalties for Ordinance Violations – Specific or Variable?,*" Local Government Law Bulletin, No. 127 (May 2012). A local government may pursue payment of a civil penalty through a civil action against an offender if she fails to pay the penalty within a prescribed time period. G.S. 153A-123(c); 160A-175(c). There is no statutory cap on the amount of civil penalties, but the Eighth Amendment to the United States Constitution prohibits civil penalties that are grossly disproportionate to their corresponding offenses. David M. Lawrence, "*Are There Limits on the Size of Penalties to Enforce Local Government Ordinances?,"* Local Government Law Bulletin, No. 128 (July 2012). The courts are unlikely to rule that a civil penalty as high as several hundred dollars violates the Eighth Amendment, so long as the penalty is not exceptionally large compared with other civil penalties imposed by the county or city. *Id.*

A city or county may have its attorney pursue a civil penalty action in superior or district court, depending on the amount of penalty or penalties involved. If the amount is small enough, a local government may be able to seek a judgment against the offender in small claims court using either its attorney or a non-attorney employee. A civil penalty action is one "in the nature of debt," which means that a person found responsible for violating an ordinance with a civil penalty provision owes a debt to the city or county. Furthermore, the burden of proof in civil penalty cases, as in most civil proceedings, is "by a preponderance of evidence," a less demanding standard than the "beyond a reasonable doubt" standard that must be satisfied to secure a criminal conviction.

The Setoff Debt Collection Act offers local governments a means of recovering monies owed to them, including civil penalties, in excess of $50.00 without having to resort to litigation. As authorized by the Act, the North Carolina Association of County Commissioners and the North Carolina League of Municipalities have established the Local Government Debt Setoff Clearinghouse. Provided they give debtors the statutorily mandated notice, cities and counties may submit qualifying debts to the Clearinghouse to be recovered from debtors' state tax refunds or lottery winnings. According to its website, the Clearinghouse has collected more than $240 million for local governments since 2002.

Local officials should not assume that incorporating civil penalty provisions into ordinances will generate significant revenue for city or county coffers. Pursuant to Article IX, Section 7 of the North Carolina Constitution, the public schools are entitled to the "clear proceeds" of monies collected for many ordinance violations. Blog posts by my colleague Kara Millonzi available here and here discuss the legal principles used to determine when and how much of the monies collected for ordinance violations must go to the public schools.

Equitable Remedies

A city or county governing board may include language in an ordinance providing for enforcement through an appropriate equitable remedy. G.S. 153A-123(d); 160A-175(d). Such language allows the city or county to obtain a court order directing an offender to comply with the ordinance. The offender who ignores such an order risks being held in contempt of court.

Public Nuisance Abatement

As explained in a blog post by my colleague Rich Ducker, a public nuisance is "a condition or activity involving real property that amounts to an unreasonable interference with the health, safety, morals, or comfort of the community." The authority of local governments to define and abate nuisances of this kind is usually exercised through ordinances that prohibit certain conditions or uses of real property. One common example is the overgrown vegetation ordinance, which imposes minimum maintenance requirements on residential or commercial lots.

A local government may seek a court order directing the defendant to take whatever steps are necessary to remedy a nuisance ordinance violation, such as closing, demolishing, or removing structures; removing fixtures, furniture, or other items; cutting grass or weeds; or improving or repairing property. If the defendant fails to obey the order within the time set by the court, he may be cited for contempt and the local government may carry out the order, automatically obtaining a lien on the property for the cost of doing so. G.S. 153A-123(e); 160A-175(e).

A court order is not always needed for a city or county to remedy a nuisance. In the case of a chronic violator of a public nuisance ordinance, a city or county may notify the individual that, if her property is found to be in violation of the ordinance during the calendar year in which notice is given, the city or county will remedy the violation without further notice and the cost of corrective action will be a lien on the property. G.S. 153A-140.2; 160A-200.1. (A chronic violator is

someone who owns property for which a city or county has issued a notice of violation under any provision of its public nuisance ordinance at least three times in the previous calendar year.) A city may issue the same sort of notice to a chronic violator of its overgrown vegetation ordinance. Session Law 2015-246.

Additionally, local governments possess statutory authority to deal with dangerous nuisances without first obtaining court orders, regardless of whether the nuisances are covered by specific ordinance provisions. Section 153A-140 of the General Statutes allows a county "to remove, abate, or remedy everything that is dangerous or prejudicial to the public health or safety." This authority does not extend to bona fide farms, but it can apply to the use of farm property for nonfarm purposes. To exercise its powers under G.S. 153A-140, a county must provide adequate notice, the right to a hearing, and the right to seek judicial review.

Similarly, G.S. 160A-193 allows a city to "remove, abate, or remedy everything in the city limits, or one mile thereof, that is dangerous to the public health or safety." Unlike G.S. 153A-140, however, G.S. 160A-193 declares that the power it confers may be exercised "summarily," which presumably means without notice or a hearing. As interpreted by the North Carolina Court of Appeals, though, G.S. 160A-193 does not allow a city to demolish a building summarily unless "the building constitutes an imminent danger to the public health or safety necessitating its immediate demolition." *Monroe v. City of New Bern*, 158 N.C. App. 275, 278 (2003). A building constitutes an imminent danger for purposes of G.S. 160A-193 if, for example, "it [is] on the verge of falling onto a sidewalk frequented by pedestrians or in a situation where the destruction of the building is necessary to stop or control a large destructive fire." *Id.* at 279. (Other statutes expressly allow cities to demolish buildings in certain circumstances, provided detailed notice and hearing requirements are honored. G.S. 160A-426, -432; 160A-439; 160A-441, -450.)

When a local government mitigates or eliminates a nuisance pursuant to G.S. 160A-193 or 153A-140, it automatically obtains a lien for the expense of corrective action on the property where the nuisance occurred if reimbursement by the offending property owner is not forthcoming. A city also enjoys a lien for the action's cost on any other real property – except a primary residence – owned by the offending property owner inside or within one mile of the city. (The owner can avoid a lien on other property by showing that the nuisance resulted solely from another's conduct).

Continuing Violations

An ordinance may specify, "when appropriate," that each day's continuing violation is a separate and distinct offense, thereby exposing offenders to mounting criminal and civil penalties the longer they remain in violation of the ordinance. G.S. 153A-123(g); 160A-175(g). I have not found a North Carolina appellate decision that addresses when it might be inappropriate for a continuing violation provision to appear in an ordinance.

Links

- www.sog.unc.edu/publications/book-chapters/general-ordinance-authority
- www.sog.unc.edu/publications/books/county-and-municipal-government-north-carolina-second-edition-2014-hard-copy-format
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-175
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-123
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-4
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-3.1
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=15a-302
- www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/lglb130.pdf
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- www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/lglb128.pdf
- www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_105A/Article_1.html
- www.ncsetoff.org/
- www.ncleg.net/Legislation/constitution/article9.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-140.2.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-200.1.html
- www.ncleg.net/EnactedLegislation/SessionLaws/HTML/2015-2016/SL2015-246.html
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-140

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-193