
Coates' Canons Blog: Sunday Brunch Ordinances – Cheers!

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In the waning days of the 2017 legislative session, the General Assembly passed an omnibus bill affecting a number of state laws regulating alcoholic beverages (SL 2017-87 (S155)). Section 4 of the bill – commonly known as the “Brunch Bill” – enacts new statutes authorizing cities and counties to adopt ordinances allowing the sale of alcoholic beverages beginning at 10:00am on Sundays (in the absence of such an ordinance, state law prohibits the sale or consumption of alcoholic beverages before 12:00 noon on Sundays). The new law’s authorization to imbibe mimosas and Bloody Marys on Sunday morning has generated a great deal of interest among cities and counties, not to mention their local restaurants. Passed by the General Assembly on June 28th, the Brunch Bill became effective as soon as Governor Cooper signed it on June 30th. Local government interest in adopting ordinances to allow “Sunday brunch” alcohol sales began quicker than you can say “Shaken, not stirred.” The Town of Carrboro’s Board of Aldermen became the first local government in the state to take advantage of the new law, adopting its Sunday brunch ordinance on July 3rd. The Raleigh City Council and Surf City followed suit two days later. By the end of the week, Atlantic Beach and Hendersonville also took action. As cities and counties across the state gin up to consider whether to adopt their own Sunday brunch ordinance, the questions have been pouring in.

What does the Brunch Bill authorize?

State law has long prohibited the sale and consumption of alcoholic beverages on a licensed premises before 12:00 noon on Sunday (GS 18A-1004(c)). Since 1963, cities and counties have had the option of extending the hours of this prohibition from noon on Sunday until 7:00am the following Monday morning (GS 18A-1004(d); SL 1963-426, s. 9). With the enactment of SL 2017-87, cities and counties now have a second local option that allows them to *expand* rather than *restrict* the time frame during which alcohol may be sold by a licensed premises on Sunday (this distinction between expansion and restriction is significant for cities as I will explain later in this post). The governing boards of cities and counties now have the authority under new GS 153A-145.7 (counties) and GS 160A-205.3 (cities) to adopt an ordinance allowing the sale of alcohol – specifically, malt beverages, unfortified wine, fortified wine, and mixed beverages – on a licensed premises on Sunday beginning at 10:00am.

What are the procedures for adopting a “Sunday brunch” ordinance?

Because the Brunch Bill does not specify any particular procedures a county or city must follow in adopting a Sunday brunch ordinance, the general ordinance statutes apply. For counties, GS 153A-45 is the operative statute. Under the county ordinance statute, a county board may adopt an ordinance at the first meeting at which it is introduced only by unanimous vote of all members of the board. If the ordinance does not receive a unanimous vote at the meeting of its introduction (but is not defeated), it *must* be considered at the board’s next regular meeting. At that meeting or any

subsequent meeting within 100 days of the date of introduction, the board may adopt the ordinance by a simple majority of those present and voting. No special public notice of the ordinance or public hearing is required, although the county board may choose to do either or both if it wishes.

For cities, GS 160A-75 is the general law for adopting ordinances. Under this statute, a city council may adopt an ordinance on the date of introduction by a 2/3 majority of the actual membership of the council. Lacking a 2/3 majority on the date of introduction and assuming the ordinance is not defeated, the ordinance can be adopted by a simple majority of those present and voting at a subsequent council meeting. Note that, for counties, the initial subsequent meeting must be the next *regular* meeting of the board; since this requirement does not apply to cities, the subsequent meeting could be a special meeting called for that purpose or a regular meeting and, in either case, it does not have to be the *next* meeting. In addition, cities are not restricted to reconsideration of the ordinance within 100 days of its introduction as is required for counties. As for public notice and public hearing, the rule for cities is the same as that for counties – no public hearing or special public notice of the ordinance is required, unless a particular city's charter requires it for all ordinances. Of course, the council may choose to do either or both if it wishes. For a more detailed discussion of the voting rules for adopting ordinances, see Frayda Bluestein's blog post *Voting Rules for Adopting Ordinances*.

Wait, did you really say that public notice and public hearings aren't required before adopting a Sunday brunch ordinance?

Yes, I did. Despite popular belief (and many local board practices and policies), the default rule is that city and county governing boards are not statutorily required to give public notice of or conduct public hearings on adopting ordinances. It is only when the ordinance's subject matter triggers notice or hearing requirements under a specific statute that these requirements apply (and, for cities, if the city's charter imposes these requirements). David Lawrence authored a blog post on public hearings, *When Are Public Hearings Required*, which includes a list of measures for which public hearings are statutorily required. An updated list of required public hearings is incorporated into the new edition of the SOG's publication *Open Meetings and Local Governments in North Carolina: Some Questions and Answers*, 8th ed. (2017).

But doesn't GS 160A-191 impose notice and hearing requirements on city Sunday-closing ordinances? Why don't those requirements apply to a city's Sunday brunch ordinance?

My colleague Trey Allen and I don't think so. GS 160A-191, titled "Limitations on enactment of Sunday-closing ordinances," requires cities – and only cities (this statute does not apply to counties) – to give public notice once a week for four consecutive weeks and conduct a public hearing on an ordinance "regulating or prohibiting business activity on Sunday." We read GS 160A-191 to apply to city ordinances that *restrict* business activities on Sundays, not those which *expand* them. The text of GS 160A-191 makes this point obvious by describing ordinances covered by the statute as "Sunday-closing ordinances." Far from restricting business activity, a Sunday brunch ordinance authorized under the new GS 160A-205.3 allows the sale of alcoholic beverages on a licensed premises during hours when such activity would otherwise be prohibited by state law. Because it *expands* rather than *restricts* the hours during which a particular type of business activity may occur on Sundays (in this case, the sale of alcoholic beverages), a Sunday brunch ordinance falls outside the scope of GS 160A-191. Thus, the distinction between expansion and restriction mentioned earlier in this post is indeed significant for cities.

The distinction between expansion and restriction is also significant if a city chooses to *repeal* a Sunday brunch ordinance that it previously adopted. In this instance, the city would be *restricting* a business activity because the effect of the ordinance repeal would be to prohibit alcohol sales prior to 12:00 noon on Sundays. Thus, the additional procedural requirements of GS 160A-191 would apply to the *repeal* of a Sunday brunch ordinance.

Does a county's Sunday brunch ordinance automatically apply within the jurisdictional limits of a city that lies within the county?

No. The general rule under GS 153A-122(a) is that a county ordinance is *only* applicable within the unincorporated areas of the county. Nothing in the Brunch Bill (S155) alters this rule. So, a county's Sunday brunch ordinance does not – and indeed, cannot – apply within a city, although it can be extended into a city by resolution adopted by the city council (see next question for further discussion of extending a county ordinance into a city).

May a county's Sunday brunch ordinance be extended to apply within a city that lies within the county?

Yes, but only if the city council adopts a resolution making the county's ordinance enforceable within the city's limits (GS 153A-122(b)). Absent this action by the city council, the county's ordinance does not apply within the city.

If the county chooses not to adopt a Sunday brunch ordinance, may a city still do so?

Yes. The Brunch Bill (S155) directly authorizes cities and counties to adopt Sunday brunch ordinances, and the authority for each is independent of the other. So, a city may adopt a Sunday brunch ordinance even if the county does not, and vice versa.

Where can I find an example of a Sunday brunch ordinance?

The North Carolina Association of County Commissioners and the North Carolina League of Municipalities have already developed model Sunday brunch ordinances which are available on their websites: NCACC model ordinance (for counties); NCLM model ordinance (for cities). The City of Raleigh's ordinance and the Town of Carrboro's ordinance are also available on their websites.

Links

- www.ncleg.net/Sessions/2017/Bills/Senate/PDF/S155v7.pdf
- ncbrunchbill.com/
- www.twcnews.com/nc/triangle-sandhills/news/2017/07/3/carrboro-adopts-state-s-brunch-bill-ordinance-takes-effect-sunday-.html
- wncn.com/2017/07/05/raleigh-city-council-votes-to-allow-sunday-morning-alcohol-sales/
- www.witn.com/content/news/Atlantic-Beach-Surf-City-approve-Sunday-brunch-option-432902983.html
- wnct.com/2017/07/06/atlantic-beach-gives-green-light-to-sunday-morning-alcohol-sales/
- www.hendersonvillelightning.com/news/6198-brunch-bill-takes-effect-sunday-in-hendersonville.html
- www.newsobserver.com/news/politics-government/state-politics/article160207874.html
- www.ncleg.net/gascrpts/statutes/statutelookup.pl?statute=18B-1004
- www.ncleg.net/EnactedLegislation/SessionLaws/HTML/1963-1964/SL1963-426.html
- www.ncleg.net/Sessions/2017/Bills/Senate/HTML/S155v7.html
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- www.sog.unc.edu/publications/books/open-meetings-and-local-governments-north-carolina-some-questions-and-answers-eighth-edition-2017
- www.ncleg.net/gascrpts/statutes/statutelookup.pl?statute=160A-191
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- [www.nclm.org/SiteCollectionDocuments/Legislative/ORDINANCE%20re%20sunday%20alcohol%20sales%20\(city%20-%20NCLM\).pdf](http://www.nclm.org/SiteCollectionDocuments/Legislative/ORDINANCE%20re%20sunday%20alcohol%20sales%20(city%20-%20NCLM).pdf)
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- carrboro.legistar.com/MeetingDetail.aspx?ID=556089&GUID=62CFCE83-27AD-4C10-9190-AB79EF88A2AB&Options=&Search=