
Coates' Canons Blog: What Is Necessary to Adopt a Code of Ordinances and Why Does It Matter?

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Article: <https://canons.sog.unc.edu/what-is-necessary-to-adopt-a-code-of-ordinances-and-why-does-it-matter/>

This entry was posted on February 24, 2014 and is filed under Enforcement, General Local Government (Miscellaneous), Ordinances & Police Powers

Peaceful Town is famous for being a quiet place to live. The town has earned this reputation through strict enforcement of its noise ordinance, which bans the use of electronic devices to project sound that is plainly audible at a distance of more than 25 feet on public streets.

As mandated by state law, the town has both an ordinance book and a code of ordinances, each of which the town clerk retains in her office. The clerk inserts all ordinances into the ordinance book immediately upon their enactment. At least once each year, the board of aldermen adopts a resolution for the purpose of incorporating recently enacted ordinances into the town code. Whenever the board takes such action, the clerk adds any ordinance covered by the resolution to the code of ordinances and removes it from the ordinance book.

The board of aldermen unanimously passed its noise ordinance in March 2000. In September 2000 it adopted a resolution incorporating the noise ordinance and several other ordinances enacted during the year into the town code.

Jason Stentorian, age 19, is an anomaly in Peaceful Town. To the dismay of local merchants and their patrons, he insists on driving through the downtown area while playing his car radio at volumes well in excess of what the noise ordinance allows. Pursuant to G.S. 14-4, local police have charged Jason with a misdemeanor for violating the noise ordinance. At a hearing in district court, Jason's attorney argues that the noise ordinance is unenforceable. The attorney doesn't dispute that the board lawfully enacted the noise ordinance in March 2000; rather, he contends that the board never properly added it to the town code. According to Jason's attorney, if the governing board of a county or city wishes to add a previously enacted ordinance to its code of ordinances, it must adopt a separate ordinance to that effect.

Is Jason's attorney correct in arguing that a governing board may not act by resolution to incorporate an existing ordinance into a county or city code? Does it matter for purposes of determining whether Peaceful Town's noise ordinance is enforceable? This blog post answers those questions.

Ordinance Books and Codes of Ordinances: The Basics

With certain exceptions, every ordinance enacted by the governing board of a county or city must appear in either an "ordinance book" or a "code of ordinances." The primary statutory provisions governing ordinance books are found in G.S. 153A-48 and 160A-78, while those for codes are located in G.S. 153A-49 and 160A-77.

All city ordinances must be filed and indexed in ordinance books following enactment by their governing boards. The same is true for county ordinances, though a county's ordinance book need not include budget ordinances, bond orders, or "any other ordinance[s] of limited interest or transitory nature," provided it contains a section showing the captions of all omitted ordinances and the page numbers where they can be found in the governing board's minute book. Each ordinance book must be kept available for public inspection in the office of the relevant county or city clerk.

Any city with a population of 5,000 or more must also "adopt and issue" a code of its ordinances. The code has to include legible and permanent copies of the city's ordinances in bound or loose-leaf volumes. It may be divided into "General Ordinances" and "Technical Ordinances," with the later encompassing zoning ordinances, subdivision control ordinances, and other specialized ordinances, such as those regulating building construction or plumbing installation. If the governing board so desires, it may omit classes of ordinances "of limited interest and transitory nature" from its code – budget ordinances are one example – but the code must clearly describe the classes of ordinances left out. The governing board should adopt and issue supplements or replacement pages to the code at least annually to ensure that it contains recently enacted ordinances or modifications to ordinances. (No supplements or replacement pages are necessary during years in

which no additions or modifications occur.) Once a governing board incorporates an ordinance into its code of ordinances, the ordinance may be removed from the ordinance book.

Cities with populations under 5,000 aren't required to maintain codes of ordinances, though no statute prohibits them from taking such action. Counties have express statutory authority to adopt and issue codes of ordinances. The rules for county codes are similar to those for city codes, and the few differences aren't important for purposes of this blog post.

My colleague Fleming Bell has observed that the legislative intent behind the ordinance book and code statutes is "to make the city's or county's laws readily accessible to its citizens." A. Fleming Bell, II, *The Attorney and the Clerk*, County and Municipal Government in North Carolina (2007). On top of keeping hard copies of ordinances in the offices of their respective clerks, many local governments further this legislative intent by putting their ordinances on the internet.

The Importance of Compliance

The effect of non-compliance with the ordinance book and code statutes can be quite dramatic. State law expressly forbids the enforcement of an ordinance – or its admission into evidence in court – unless it has been filed and indexed in an ordinance book or codified in a code of ordinances pursuant to the relevant statutory provisions. G.S. 153A-50, 160A-79. The law presumes, however, that local governments have satisfied those provisions, and consequently, anyone who challenges an ordinance on the grounds that it hasn't been properly filed and indexed or codified has the burden of proving non-compliance.

When it comes to other ordinance book and code requirements, not every deviation from the statutes renders an ordinance unenforceable, at least according to the North Carolina Court of Appeals in *State v. Desperados, Inc.*, 194 N.C. App. 821 (2009) (unpublished). One of the defendants found guilty of violating a county noise ordinance in *Desperados* appealed her conviction, arguing that the ordinance was unenforceable because the county had maintained its ordinance book in the register of deeds' office instead of in the clerk's office as G.S. 153A-48 specifies. In upholding the defendant's conviction, the court of appeals determined that the county had satisfied "the spirit" of G.S. 153A-48 by keeping the ordinance book in a public place located across the hall from the clerk's office.

For technical legal reasons *Desperados* isn't binding precedent. Nonetheless, a lower court would almost certainly refer to it for guidance if confronted by allegations that an ordinance is unenforceable due to a failure to comply with the ordinance book and code statutes. *Desperados* suggests that a departure from those statutes – except when it involves the failure to file and index or codify an ordinance – isn't necessarily fatal to an ordinance's enforceability, provided the public's access to the ordinance hasn't been limited.

Adoption of a Code of Ordinances

Actions by local governing boards typically take the form of ordinances, resolutions, motions, or orders. As my colleague David Lawrence has noted, textbooks often describe ordinances as permanent rules of conduct imposed by local governing boards on their citizens, while resolutions are usually thought of as expressions of board opinion, and motions and orders are considered methods of expressing board decisions. David Lawrence, *City and County Governing Boards*, County and Municipal Government in North Carolina (2007). In the real world, local governing boards tend to use resolutions, motions, and orders somewhat interchangeably.

Both G.S. 153A-49 and 160A-77 are silent as to what exactly is necessary for a local government to adopt or update a code of ordinances. Given the absence of a clear statutory mandate to act by ordinance, there is no good reason to assume that a governing board must use an ordinance when doing so. After all, the ordinances that make up a code have already been voted on by the governing board, and the mere adoption or updating of a code doesn't impose any new rules of conduct on the citizens of a county or city.

Under G.S. 160A-79, a duly adopted code is admissible in all judicial and administrative proceedings if it "contain[s] a statement that the code is published by order of the [governing board]." The use of the phrase "by order" in G.S. 160A-79 could be interpreted to mean that an order is the preferred method of code adoption, but this seems like a bit of a stretch. Board action to adopt or update a code by resolution, motion, or order should be legally sufficient. Regardless of the precise form of action employed, the board can include a statement that it has ordered publication of the code.

Unfortunately for Jason Stentorian, the inconsiderate young driver mentioned at the outset of this blog post, his attorney is



wrong about the law. The board of aldermen for Peaceful Town didn't violate G.S. 160A-77 when it acted by resolution to add the noise ordinance to the town code. Indeed, the ordinance would be enforceable even if the board had acted by motion or order. If the attorney demonstrates that the board has failed in some other way to comply with the statutory requirements for codes of ordinances, the court probably won't deem the noise ordinance unenforceable unless the failure somehow reduced public access to the ordinance.

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-4
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-48
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-78
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-49
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-77
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-50
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-79