
Coates' Canons Blog: Which City and County Ordinances Apply in the ETJ?

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The county zoning inspector received a call from a citizen complaining about a large accumulation of junk in a neighbor's back yard. The caller said there are several old refrigerators, some discarded furniture, and "a whole bunch of other junk" scattered about the yard. The caller said she had politely asked her neighbor to clean the mess up as it was becoming a safety hazard as well as an eyesore, but had been rebuffed in terms she could not repeat over the phone. The inspector told her the county did indeed have a nuisance lot ordinance and it sounded like this might well be a violation, so he would investigate and let her know what he found.

As a first step in the investigation, the inspector looked up the property information for the site of the alleged violation to verify the property ownership. At this point he discovered that although the property is located a mile and a half outside the city, it is in the city's extraterritorial planning jurisdiction. He knew the city handled all complaints about zoning violations in this area, but what about this situation? Should he refer the complaint about the nuisance lot to the city or is this the county's responsibility?

Municipal Extraterritorial Jurisdiction

North Carolina cities have since 1959 had the authority to apply their land development regulations to a perimeter area around the city. This area is the municipal extraterritorial planning jurisdiction, commonly referred to as the city "ETJ." This authority is described in this [earlier blog post](#). Many North Carolina cities have exercised this authority to apply city planning and development regulations to these perimeter areas. In a [SOG survey](#) of N.C. cities completed in 2005, 62% of responding cities had adopted extraterritorial planning jurisdiction (including 85% of the cities with populations over 10,000).

Jurisdiction for Development Regulations in the ETJ

[G.S. 160A-360\(a\)](#) provides that once a city establishes extraterritorial planning jurisdiction, it has exclusive jurisdiction for development regulations in the ETJ. [G.S. 160A-360\(c\)](#) and [153A-320](#) provide that the county has exclusive jurisdiction for planning and development regulations in all parts of the county that are outside of city corporate limits and that are outside of an established ETJ.

A city is not allowed to apply an ordinance in the ETJ that it is not also applying within the city. But cities are not required to apply *all* city development ordinances that apply in the city to the ETJ. A city may have some development regulations that it applies only within the corporate limits, but it may not have a development regulation that only applies in the ETJ.

Even if a city is not applying all of its development regulations in an ETJ, the county has no authority to apply *any* county development regulation there. The county may apply county development regulations within a city or within an ETJ only if formally requested to do so by the city council and only if the county board of commissioners agree to do so. [G.S. 160A-360\(d\)](#). There is no comparable authority for the city and county to mutually agree to apply city regulations to portions of the county outside of the city boundary and outside of an established ETJ area.

Scope of Development Regulations Affected by the ETJ

[G.S. 160A-360\(a\)](#) provides that cities are authorized to apply "all of the powers granted by this Article" within the ETJ. The "Article" this authorization refers to is Article 19 of Chapter 160A of the General Statutes. So what powers does this Article cover?



For the most part, all of the standard development regulations a city can adopt are authorized by Article 19. This includes zoning and subdivision regulation, building code enforcement, historic districts, and minimum housing codes. In addition, authority for planning, open space acquisition, and various community development programs also can be applied by cities in the ETJ. The table below lists the specific planning and development regulation authorities included in Article 19, and thus available for city use in the ETJ.

Powers Allocated to Cities in the ETJ

Regulations

Zoning
Subdivision
Historic districts and landmarks
Development agreements
Construction of wireless telecommunication facilities
Building inspection
Minimum housing codes
Erosion and sedimentation control
Floodway regulation
Mountain ridge protection
Transportation corridor official maps
Regulation of forestry activities
Stormwater control ordinances (and nonregulatory aspects of stormwater management systems)

Planning, Grants, and Development Programs

Planning
Acquisition of open space
Community appearance commissions
Community development grants and programs
Acquisition and disposition of property for redevelopment
Urban Development Action Grants and urban homesteading programs
Downtown development projects
Financing renewable energy and energy efficiency programs

There is a comparable list of authorized development regulations for counties. Article 18 of Chapter 153A of the General Statutes authorizes county planning and development regulations in areas not subject to city jurisdiction. Article 18 provides for county planning, zoning, subdivision regulations, development agreements, regulation of wireless telecommunication facilities, building inspection, and community development programs. In addition, several of the municipal authorizations noted above also provide for county use of the tool outside of city jurisdiction. These include historic districts and landmarks, minimum housing codes, community appearance commissions, and open space acquisition. Together these are the powers the county loses authority to apply in areas where an ETJ has been adopted.

One other statutory provision can come into play in extraordinary circumstances. In addition to these provisions on application of development regulations in an established ETJ, there is a statutory provision dating back to 1917 that authorizes cities to abate public health and safety nuisances that are within one mile of a city. G.S. 160A-193. This would involve the city filing a nuisance abatement suit, however, rather than extending municipal jurisdiction for a municipal general police power ordinance on overgrown or nuisance lots.

Ordinances That Remain a County Responsibility in the ETJ

Counties may apply a county ordinance that is *not* a development regulation listed above to any part of the county that is not within city limits. **G.S. 153A-122**. Unlike development regulations, these county ordinances can be applied in the municipal extraterritorial area.

These regulations are often referred to as “general police power” ordinances. They are authorized by Article 6 of Chapter 153A of the General Statutes. Within this Article there is both a general authorization of ordinances and a number of specific types of ordinances that are explicitly set forth. The general authorization is G.S. 153A-121, which allows counties to adopt regulations to protect the “health, safety, or welfare of its citizens and the peace and dignity of the county” and to prevent nuisances. Article 6 also includes authorization for a variety of specific ordinances. These include regulations on abandoned and junk cars, public health nuisances, flea markets, places of amusement, outdoor advertising, solar collectors, and cisterns. Also authorized are regulations dealing with explosives, dangerous animals, disposal of trash, garbage and solid wastes, and parking areas. All of these county general police power regulations may be applied by the county within a municipal ETJ.

Cities have comparable authority for general police power regulations set out in Article 8 of Chapter 160A of the General Statutes. However, unlike development regulations, city police power regulations can only be applied within the city limits and not within an ETJ area. The only exceptions to this limit is that these city ordinances can be applied on city-owned property outside the city (G.S. 160A-176) and ordinances regulating swimming, surfing, littering, and personal watercraft operation can be applied by some cities to waterways in their ETJ (G.S. 160A-176.1, -176.2).

In sum, municipalities have exclusive jurisdiction for development regulations both within the city limits and within an established municipal ETJ. But the city does not have authority to apply its general police power regulations within an ETJ. The county retains authority for general police power regulations within all unincorporated areas, including ETJ areas, as well as having authority to apply county development regulations to unincorporated areas of the county that are outside of both city limits and established ETJ areas. The table below summarizes this allocation of responsibility.

<i>Type of Regulation</i>	<i>Inside city limits</i>	<i>City ETJ</i>	<i>Unincorporated areas of the county</i>
Development Regulations	City	City	County
General Police Power Regulations	City	County	County

Ordinances with Dual Sources of Authority

For most types of ordinances, there is a single source of authority and the rules above govern where city and county ordinances apply. Some ordinances, however, can be adopted either as a general police power ordinance or incorporated within a development regulation, such as a zoning ordinance or a unified development ordinance. A typical example is a sign regulation, which in some jurisdictions is a separate general police power ordinance while in other jurisdictions it is part of a zoning ordinance. Another example is a regulation on siting adult businesses. G.S. 160A-181.1, which authorizes regulation of adult businesses, is a general police power authority, but it explicitly provides that these regulations can also be adopted as part of a zoning ordinance.

Our courts have held that where there are two sources of authority for an ordinance, a city or county may freely elect which to use. **Summey Outdoor Advertising, Inc. v. County of Henderson**, 96 N.C. App. 533, 386 S.E.2d 439 (1989), *review denied*, 326 N.C. 486, 392 S.E.2d 101 (1990). The source of authority chosen dictates whether the ordinance is applicable in an ETJ. If it is adopted as part of zoning, the development regulation rules apply, but if it is adopted as a general police power ordinance, those rules apply. There is one cautionary note, however. If the type of regulation clearly falls into the development regulation category, those rules will be applied even if the jurisdiction attempts to adopt the regulation as a general police power ordinance. **Sandy Mush Properties, Inc. v. Rutherford County**, 164 N.C. App. 162, 595 S.E.2d 233 (2004). The rationale is that if the statutes set specific procedural requirements (such as notice and hearing requirements) for a particular type of regulation, those procedures are mandatory and cannot be avoided by labeling the ordinance a “general police power” ordinance rather than a “development regulation.” That rationale carries over to the statutory allocation of geographic jurisdiction for the respective types of ordinances.

A further complicating factor is that there are also city and county ordinances authorized by statutory provisions that are not within either Chapter 160A or 153A. Examples include stormwater regulations (G.S. 143-214.7(c)), floodplain regulations (G.S. 143-215.54), mountain ridge protection regulations (G.S. 113A-208), and sedimentation and erosion control ordinances (G.S. 113A-60). Most of these separate authorizations do not specify whether cities or counties have jurisdiction for their application within an ETJ. However, most of these authorizations are cross-referenced in the Article on development regulations of the city statutes. So a city has authority to impose stormwater, floodplain, mountain ridge protection, and sedimentation erosion control ordinances in an established ETJ. G.S. 160A-458 to -459.2. While the county statutes generally do not have comparable cross-references, it is reasonable to infer that the legislative allocation to the development regulation authority for cities removes county jurisdiction for them in an ETJ as there could otherwise be overlapping ordinances on the same topic.

Issues with dual authority ordinances arise most frequently in the thirty-six counties that do not have countywide zoning. Where countywide zoning is in place, both the city and county regulations are usually incorporated into a zoning ordinance and the allocation of jurisdiction within the ETJ is clear. Many of the counties without county wide zoning, however, have adopted general police power ordinances on a variety of topics that are typically incorporated into zoning or unified development ordinances. Examples include regulations on telecommunication towers, high impact industries, wind and solar energy facilities, adult businesses, manufactured home parks, and signs. In these instances, city zoning still applies in the ETJ, but so does the county general police power regulation. In these circumstances, there can be overlapping city and county regulation of the same topic with ETJ areas.

In conclusion, the critical inquiry in determining whether a city or county ordinance is applicable in an ETJ is to discern the source of authority for the ordinance. If it is authorized and adopted as a development regulation, the city has jurisdiction. If it is authorized and adopted as a general police power ordinance, the county has jurisdiction. In our instance, the alleged violation would be covered by a nuisance lot ordinance, which is a general police power regulation. So in this instance the county ordinance is applicable within the city ETJ and the county inspector should proceed with his investigation.

Links

- canons.sog.unc.edu/?p=4327



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- [sogpubs.unc.edu/electronicversions/pdfs/ss20.pdf?](https://sogpubs.unc.edu/electronicversions/pdfs/ss20.pdf)
 - www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-360.html
 - www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-320.html
 - www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-122.html
 - appellate.nccourts.org/opinions/?c=2&pdf=MjAwNC8wMi0xNTg3LTIucGRm