

## **Summary of Decriminalization Revisions to High Point's Code of Ordinances**

### **Session Law 2021-138/Senate Bill 300**

On September 2, 2021, the Governor signed Session Law 2021-138/Senate Bill 300 (“SB 300”) into law. SB 300 is a wide-ranging criminal justice reform law. Among other reforms, the law takes steps to decriminalize some local ordinances. Prior to this legislation, State law provided that a violation of any city ordinance was by default a misdemeanor (as provided by G.S. 14-4) unless the ordinance provided otherwise. In other words, there was a presumption in State law that the City could criminally enforce ordinance violations (by issuing a criminal citation and forcing the violator to appear in court and pay criminal penalties) even if the ordinance didn’t explicitly provide for such criminal enforcement. SB 300 reversed that presumption. Under the new statutory language, local governments must amend local ordinances to specifically identify violations that may be enforced criminally. Additionally, the legislation provides a list of ordinances that may no longer impose a criminal penalty. Any ordinance adopted under any of the following statutes may no longer impose a criminal penalty<sup>1</sup>:

- Chapter 160D of the General Statutes (Planning and Development), or its predecessor statutes, except for those ordinances related to unsafe buildings;
- G.S. 153A-134, Regulating and licensing businesses, trades, etc.;
- G.S. 153A-138, Registration of mobile homes, house trailers, etc.;
- G.S. 153A-140.1, Stream-clearing programs;
- G.S. 160D-912, Outdoor advertising, or its predecessor statute;
- G.S. 160D-914, Solar collectors, or its predecessor statute; and
- G.S. 153A-145, Limitations on regulating cisterns and rain barrels.

### **Procedural Background**

The City Attorney’s Office worked with City staff, including but not limited to the Manager’s Office, Planning and Development Department, Police Department, and Public Services Department, to make the following proposed revisions to High Point’s Code of Ordinances (“Code”) in light of SB 300:

- Decriminalized sections of the Code that fall into the above categories that may no longer be criminalized;
- Decriminalized sections of the Code that are best enforced with civil penalties;

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<sup>1</sup> SB 300 also prohibited imposing a criminal penalty for a violation of “any ordinance regulating trees.”

- Criminalized sections of the Code where criminal enforcement is allowed and necessary by specifying violations are punishable as a misdemeanor; and
- Standardized and codified a procedure for civil enforcement of the Code.

**The following is a general summary of the lengthy process used in drafting the proposed revisions to the Code in light of SB 300:**

- Searched the entire Code for the following terms to identify any sections of the ordinance that were currently criminalized: “criminal”, “punish”, “in accordance with”, “misdemeanor”, “commits an offense”, “14-4”, “175”.
- Decriminalized each section that could no longer be criminalized after SB 300.
- Identified any sections that are currently criminalized via a general criminal penalties section (i.e., where one section criminalized all the other sections in a Title, Chapter, or Article) and worked with City staff (e.g., Public Services for Title 6, Chapter 2, and Police Department for the remaining sections) to determine which specific sections could (and should) be criminalized.
- Reviewed other jurisdictions adopted criminalization/criminalization revisions.
- Incorporated all proposed revisions into a draft redline of the Code.
- Circulated for review and comment by the City Manager’s Office a draft redline of the Code with highlighted sections where the attorneys recommended decriminalizing, criminalizing, or where the section required a policy decision as to whether to criminalize or decriminalize.
- Met with the City Manager’s Office to finalize the draft redline of the Code based on the City managers’ input.
- Submitted questions regarding the revisions to the Code to the UNC School of Government, which were partially discussed at the Municipal Attorney’s Conference.
- Drafted “clean up” revisions to make the Code more consistent and clear, including revisions to the general civil enforcement section (Sec. 1-1-4) to provide uniformity for how the City issues notices of violation, civil penalties, and handles appeals.
- Finalized the draft redline of the Code for the Public Safety Committee’s review and prepared a list of sections in the current draft that are criminalized and/or where legal ambiguity still exists (due to the language used in SB 300).

Summary of Proposed Revisions

The following is a general summary of the proposed revisions to the Code in light of SB 300, which are listed by Title/Chapter/Article:

- Title 1, Chapter 1 (Use and Construction of the Code)<sup>2</sup>
  - Minor changes regarding how the Code is cited and definitions of terms.
  - Revised Sec. 1-1-4 to provide uniform process for civil enforcement of the Code.
  - Decriminalized altering the Code.
- Title 3, Chapter 2, Article C (Vehicle Lease or Rental Taxes)
  - Decriminalized one section that is already criminalized under state law.
- Title 5, Chapter 2, (Fire Prevention and Protection)
  - Decriminalized telephone alarm system prohibition.
- Title 5, Chapter 3, (Emergency Management)
  - Decriminalized one section that is already criminalized under state law.
- Title 6, Chapter 1 (Streets and Sidewalks)
  - Decriminalized ordinance regarding placement of hedges as ordinance that “regulates trees” (can’t be criminalized under SB 300).
- Title 6, Chapter 2 (Solid Waste Collection and Disposal)
  - Worked with the Public Services Director to decriminalize or criminalize each section and clean up sections that needed to be updated/clarified.
- Title 9, Article E (Minimum Housing Code)
  - Decriminalized all sections except those which could reasonably relate to “unsafe buildings.”
- Title 9, Article G (Regulation of Abandoned and Junked Motor Vehicles)
  - Allowed relevant section to remain criminalized because City gets its authority to enact the ordinance under G.S. § 160A-303.
- Title 9, Article I (Abandoned Structure Code)
  - Decriminalized all sections except those which could reasonably relate to “unsafe buildings.”
- Title 9, Article K (Trash, Debris, and Dilapidated Outbuildings Code)
  - Decriminalized because City likely derived authority to enact ordinance under 160D and there is no sufficient relation to “unsafe buildings.”
- Title 10 (Transportation and Traffic)
  - Worked with the Police Department Attorney to determine which sections needed to be decriminalized or criminalized.
- Title 11, Chapter 2 (Taxicab)

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<sup>2</sup> Similar changes were made throughout the Code in the sections that were being revised for decriminalization or criminalization purposes.

- Decriminalized most of the sections in the Chapter because the City likely derives authority to enact the sections under G.S. 160A-304, which means those sections cannot be criminalized under SB 300.
- Criminalized those sections that fall outside G.S. 160A-304.
- Title 11, Chapter 6 (Massage establishments) & Chapter 7 (Sexually oriented business)
  - Decriminalized the sections in Chapters 6 and 7 where the City likely derives authority to enact the sections under 160A-194, which means those sections cannot be criminalized under SB 300.
- Title 12 (Offenses)
  - Worked with Police Department Attorney to determine which sections needed to be decriminalized or criminalized.
  - Made minor “clean up” revisions to several sections regarding civil penalties, fees, appeals, etc. to conform the with the revised Sec. 1-1-4.

### Legend for Draft Redline of the Code

The color-coding highlights in the draft redline of the Code are as follows:

- **Yellow** = Staff recommends **clean-up/non-criminalizing related changes** (e.g., civil penalties sections).<sup>3</sup>
- **Red** = Staff recommends **not criminalizing** (it was *not* criminalized before) or **decriminalizing** (it *was* criminalized before, but now staff recommends decriminalizing) either because the section can't be criminalized under SB 300 or City staff recommend decriminalizing.
- **Green** = Staff recommends **criminalizing** it.
- No highlighting = Staff recommends not taking any action because it is not a section that can really be criminalized (e.g., definitions, applicability, administration, etc.).

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<sup>3</sup> The draft redline of the Code does not revise **all** sections of the Code that deal with civil penalties/appeals to reference back to the newly revised Section 1-1-4 (which now standardizes the civil enforcement process). This has been done for only the sections that were already being decriminalized or criminalized. The attorneys can go back and make those clarifying and consistency revisions to the other sections of the Code should the City Council decide it's appropriate to do so.