



CITY OF HENDERSONVILLE AGENDA ITEM SUMMARY

SUBMITTER: Daniel Heyman, Staff Attorney **MEETING DATE:** February 8, 2023
AGENDA SECTION: NEW BUSINESS **DEPARTMENT:** Legal
TITLE OF ITEM: Amendments to City Code to Conform with SB 300 – *Daniel Heyman, Staff Attorney*

SUGGESTED MOTION(S):

I move City Council to adopt *An Ordinance of the City of Hendersonville City Council to Amend Certain Provisions of the Code of Ordinances Related to Criminal Enforcement* as presented for its first reading.

SUMMARY: In 2021, the NC Legislature adopted SL 2021-138, otherwise more commonly known as Senate Bill 300, to decriminalize City Ordinances as a whole. Prior to this, as a matter of law, violation of any local ordinance was a misdemeanor pursuant to NCGS § 14-4. Senate Bill 300 changed this by:

1. Amending the City's enforcement statute, NCGS § 160A-175, to provide that violation of a city ordinance may be a misdemeanor or an infraction *only if the city specifies such in the ordinance*;
2. Determining that no ordinance of the following type may impose a criminal penalty:
 - a. Any ordinance adopted under NCGS Chapter 160D, except those related to unsafe buildings;
 - b. Any ordinance adopted under NCGS 160A-193.1, stream clearing programs
 - c. Any ordinance adopted under NCGS 160A-194, regulating and licensing businesses, trades, etc.;
 - d. Any ordinance regulating outdoor advertising (ref NCGS 160D-912);
 - e. Any ordinance regulating solar collectors, rain cisterns and barrels, taxis, building setback lines, curb cut regulations, or any ordinance regulating trees.

SB 300 also amended NCGS 14-4, the statute providing that violations of a local ordinance are a misdemeanor [if specified in the ordinances themselves] to add defenses to an ordinance violation. It provides that a person may *not* be found guilty of an ordinance violation if, when tried, the person produces proof of compliance with the ordinance by any of the following:

1. No new alleged violations of the ordinance within 30 days of the initial alleged violation; or
2. The person provides proof of a good faith effort to seek assistance to address any underlying factors related to unemployment, homelessness, mental health, or substance abuse that might relate to the person's ability to comply with the local ordinance.

Staff has been through the City's code and has prepared a draft ordinance for consideration by City Council that designates which of the violations will be a misdemeanor. Adoption will require two readings.

ATTACHMENTS:

PROPOSED ORDINANCE

Excerpts from SB300