



## Residential Fire Sprinklers in North Carolina The Question of Authority

The authority to prepare and adopt a comprehensive, state-wide uniform building code is vested exclusively in the North Carolina Building Code Council (hereinafter, the “Council”) [N.C.G.S. 143-138(a)]. Prior to 17 April 1997, local governments in North Carolina could adopt “a building code or building rules and regulations governing construction”, but could enforce such local codes only if such codes were subsequently approved by the Council.

In 1997, the authority of local governments to adopt local building codes was repealed by Part 5 of House Bill 95, enacted on 17 April 1997 as SL1997-26 (<http://www.ncleg.net/Sessions/1997/Bills/House/HTML/H95v3.html>). The only authority now available to local governments under N.C.G.S. § 143-138(e) is the authority to adopt a “fire prevention code ... within its jurisdiction” as set forth below:

“(e) Effect upon Local Codes. – The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. Approved rules shall become effective in accordance with G.S. 150B-21.3. However, any political subdivision of the State may adopt a fire prevention code and floodplain management regulations within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than floodplain management regulations and those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. Local floodplain regulations may regulate all types and uses of buildings or structures located in flood hazard areas identified by local, State, and federal agencies, and include provisions governing substantial improvements, substantial damage, cumulative substantial improvements, lowest floor elevation, protection of mechanical and electrical systems, foundation construction, anchorage, acceptable flood resistant materials, and other measures the political subdivision deems necessary considering the characteristics of its flood hazards and vulnerability. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local fire prevention codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, shall be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, a local government may not institute a civil action under G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in G.S. 160A-434.” [emphasis added]

As you can see, N.C.G.S. § 143-138(e) provides that such local fire prevention codes may regulate “*only activities and conditions* in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, *and are not matters in conflict with the State Building Code*” (emphasis added). Thus, local governments may adopt by ordinance fire prevention codes regulating occupancies, material storage, and activities in buildings, but no such ordinance may prescribe the construction or components of such buildings or in any other way be in conflict with the State Building Code. Clearly, a local ordinance requiring sprinklers in one- and two-family dwellings would violate both provisions of this statute. As well, with regard to sprinkler systems in particular, North Carolina courts, in 1975, ruled that a local government’s general ordinance-making powers do not provide local governments the authority to ignore explicit statewide legislative enactments and, in effect, amend the North Carolina Building Code by codifying a sprinkler ordinance as part of its Fire Prevention Code [Greene v. City of Winston-Salem, 287 N.C. 66, 213 S.E.2d 231 (1975)].