

## Chapter 1

### Introduction

#### 1.1 *General Powers*

The North Carolina Department of Transportation (NCDOT) was created for the purpose of constructing and maintaining public highways (*De Bruhl v. State Highway and Public Works Commission*, 1956). The general powers of the NCDOT are listed in general statute §136-18. As part of these general powers, the NCDOT has the authority to “make rules, regulations and ordinances for the use of, and to police traffic on, the State highways, and to prevent their abuse by individuals, corporations and public corporations, by trucks, tractors, trailers or other heavy or destructive vehicles or machinery, or by any other means whatsoever” (§136-18, 5).

General powers are, by definition, broad in their nature and may apply to a wide spectrum of issues and conditions. In the case of §136-18 (5), it is a requirement of the NCDOT to regulate traffic on the State Highway System, and the purpose of this regulation is not specified except as follows:

- Use of the system
- Police traffic on the system
- Prevent abuse of the system

The types and conditions of ordinances is not defined in §136-18 (5), and the only restrictions on ordinances is that (1) they do not conflict with any existing statute and (2) they do not conflict with any ordinance of an incorporated city/town. Therefore, the NCDOT (in general) is not prohibited from making any ordinances that regulate, restrict, or prohibit use of the State Highway System in any way as long as it meets the purpose for the creation of the NCDOT, it meets one of the purposes for regulation of the system, and it does not conflict with one of the two restrictions.

In some cases, other statutes have been enacted that define the general powers of the NCDOT under certain conditions. In these specific cases, the more defining statute would control over the general powers. However, where another statute does not specifically define a portion of the general powers, §136-18 (5) continues to provide broad latitude in regulating the State Highway System and traffic on it.

## **1.2 Ordinance Authority**

In general, the North Carolina Department of Transportation (NCDOT) has the authority to "make rules, regulations and ordinances for the use of, and to police traffic on, the State highways, and to prevent their abuse" (§136-18, 5). The Board of Transportation (BOT) has the power and duty to "promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department" (§143B-350, f, g). The BOT has delegated to the Secretary of Transportation the authority to "adopt all necessary rules for the use of and to police traffic on state highways" (19A:4A.0104, a). The Secretary of Transportation has sub-delegated to the State Traffic Engineer (STE) the authority to "adopt all necessary rules for the use of and to police traffic on state highways, and to set, change or extend route numbers on the Primary highway system of North Carolina" (19A:4A.0104, b).

Pursuant to this authority, the State Traffic Engineer adopts and promulgates ordinances based on traffic and engineering studies performed by the Transportation Mobility and Safety Division (TMSD) and in accordance with North Carolina General Statutes (NCGS) and the North Carolina Administrative Code (NCAC). Ordinances are usually not required for conditions that are covered by general statute. However, ordinances are generally required where any of the following occur:

- a. An ordinance is required by general statute (such as speed zones),
- b. Municipal concurrence is required (such as a speed zone within a municipality),
- c. Clarification of a general statute is required (such as defining the speed limit of a speed zone),
- d. A traffic engineering investigation into the safety and/or operational conditions is required or necessary (such as reasonable access for STAA routes or a no parking, tow-away zone), or
- e. An inventory of a given condition is desired.

## **1.3 Types of Ordinances**

- 1 - No Parking
- 2 - Municipal Speed Zones
- 3 - Rural Speed Zones
- 4 - No Right Turn on Red
- 5 - Temporary Speed Limits
- 6 - Yield Signs (discontinued August 23, 2005)
- 7 - Stop Signs (discontinued August 23, 2005)
- 8 - One Way Streets
- 9 - Work Zone Speed Limits
- 10 - Work Zone Speed Penalty
- 11 - No Parking/Tow-Away Zone
- 12 - Truck Routes
- 13 - No Hunting from Right of Way
- 14 - No Fishing from Bridge

- 15 - No Jumping or Diving from Bridge
- 16 - Minimum Speed (discontinued November 6, 2009)
- 17 - Speed Limit in School Zones (discontinued November 6, 2009)
- 18 - No Left Turn
- 19 - No Right Turn
- 20 - No U-Turn
- 21 - No Stopping, Standing, or Parking on Right of Way
- 22 - Route Changes
- 23 - Truck Information Station
- 24 - No Fishing from Highway Right of Way
- 25 - No Loitering on Highway Right of Way
- 26 - No Hunting or Fishing on Highway Right of Way (discontinued)
- 27 - No Motorized Vehicle Zone
- 28 - Trucks Prohibited Route
- 29 - School Speed Zone – Municipal
- 30 - School Speed Zone – Rural
- 31 - Minimum Speed – Municipal
- 32 - Minimum Speed – Rural
- 33 - Speed Limit on Structures
- 34 - Night Time Speed Limit – Municipal
- 35 - Night Time Speed Limit – Rural
- 36 - Work Zone Variable Speed Limit
- 37 - Variable Speed Limit – Municipal
- 38 - Variable Speed Limit – Rural
- 40 - STAA Reasonable Access (All)
- 41 - STAA Reasonable Access (53' Only)
- 42 - STAA Reasonable Access (Twins Only)
- 43 - STAA National Truck Network
- 44 - STAA Designated Route (All)
- 45 - STAA Designated Route (53' Only)
- 46 - STAA Designated Route (Twins Only)
- 49 - No Through Trucks
- 50 - Truck Lane Restriction
- 60 - Transitway
- 61 - High Occupancy Vehicle (HOV) Lane
- 62 - Temporary Shoulder Lanes
- 63 - Directional Flow Lanes

#### **1.4 *Distance, Direction, and Terminal Points***

The distances, directions, and terminal (beginning and ending) points of all ordinances shall be based solely on the TEAAS feature report for the given road. Contact the Ordinance Program Administrator if a feature report is incorrect, incomplete, or does not exist.

Terminal points should only consist of state boundaries, county boundaries, or roads. Bridges, railroad crossings, and municipal boundaries should not be used for terminal points.

All ordinances should milepost. Therefore, features that have loop conditions present may not be used as terminal points.

#### **1.5 *Overlaps***

Overlaps exist when two or more ordinances, at least in part, cover the same section of road. In some cases this is not a problem because the condition remains unchanged (such as two no parking ordinances overlapping each other) or the ordinances represent non-competitive conditions (such as a no parking ordinance overlapping a truck route).

However, in many cases an overlap causes a problem because a conflict of conditions exist (such as a truck route overlapping a truck prohibited route, or a rural speed limit overlapping a municipal speed limit). New ordinances with problematic overlaps are not allowed into the ordinance system. Existing ordinances with problematic overlaps should be corrected through the repeal/approval process.

#### **1.6 *Municipal Certificates***

Municipal certificates for speed zone changes (approvals and repeals) must be approved by the governing body as described in §20-141, must be certified under seal by the city clerk, and can not be changed or altered in any way once certified and sealed.

Municipalities may delegate this authority to an individual position (i.e. City Manager, City Traffic Engineer, Public Works Director, etc.), but the State Traffic Engineer must have a copy of the ordinance delegating authority on file and acknowledgment of receipt of the delegation, and must be notified if the delegated condition changes (the City of Durham is the only municipality currently doing this). TEAAS will produce standard municipal certificates based on the information entered into the system to ensure consistency.

With regards to a consolidated city-county (incorporated county), each urban service district is considered a municipality for the purposes of municipal certificates (§136-66.6). Also, previously unincorporated areas within the county are considered rural areas and do not need municipal certificates unless the governing board of the consolidated city-county is providing street services (§136-66.6).

### **1.7 *New Ordinances***

New ordinances shall milepost and shall not violate any overlap restrictions prior to approval. Also, new municipal ordinances shall have an original signed and notarized municipal approval certificate prior to approval, new work zone ordinances shall have a work zone ordinance request form and a work zone justification package (including drawings), and new truck prohibition ordinances shall have a justification form prior to approval. No other paperwork is required.

### **1.8 *Repealing Ordinances***

Municipal ordinances recommended for repeal shall have an original signed and notarized municipal repeal certificate prior to repeal, and truck prohibition ordinances recommended for repeal shall have a justification form prior to repeal. No other paperwork is required.

### **1.9 *Certificate of Rulemaking***

The Certificate of Rulemaking (COR) is the official record of legally enacted and rescinded ordinances. One certificate exists for each date where ordinances were enacted or rescinded.

### **1.10 *Controlled Access Facility***

A controlled access facility means a facility will full, partial, or limited access control.

### **1.11 *Penalties***

The penalty for violating an ordinance should be specified in the general statute the ordinance is based on or specified in the article within which the general statute resides.

The violation of any ordinance based on §136-18(5) constitutes a Class 1 misdemeanor (Attorney General's Office advisory ruling, September 11, 1998).