

Trouble With The Feds

**An Overview of Federal Statutory Issues
in Local Urban Planning and Zoning Law**

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Federal Statutory Issues And Local Zoning Regulation

- *Federal Preemption Generally*
- *The Religious Land Use and Institutionalized Persons Act of 2000*
- *The Federal Fair Housing Amendments' Act of 1988*
- *The National Manufactured Housing Construction and Safety Act of 1974*
- *Federal Broadcasting Statutes and The Telecommunications Act of 1996*
- *Federal Statutes on Aviation Safety and Noise*

- *Federal Preemption of Local Zoning Regulation*
- Federal law generally preempts local regulation of activities on federal lands (unless federal law provides otherwise).
- Federal agency activities and land uses generally are immune from state or local land use controls (unless federal law provides otherwise).
- Federal regulation of a land use activity may be held to preempt state or local regulation (based on an analysis that looks to statutory intent and impact on the federal regulatory scheme). See *Weaver's Cove Energy, LLC v. Rhode Island Coastal Resources Management Council*, 583 F. Supp. 2d 259 (D. R.I. 2008) (holding that the federal 2005 Natural Gas Act preempted state or local regulation of location and siting of liquefied natural gas terminal storage facility); *Norfolk Southern Ry Co. v. City of Alexandria*, 608 F.3d 150 (2010) (federal law preempted local haul ordinance involving truck deloading of railcars).

The Religious Land Use and Institutionalized Persons Act of 2000, at 42 U.S.C.A. §2000cc (West 2003)

This federal law directly preempts local controls on religious land uses that violate that law's provisions related to discrimination against or substantially burdening religious land uses. *See generally* Edward H. Ziegler, 2 Rathkopf's The Law of Zoning and Planning, ch. 29 at 29.18 (4th ed. 2005 and Supp. 2012). Generally the law prohibits:

1. Exclusion of religious land uses from the community or unreasonable limitations on or discrimination against a particular religious land use.
2. Treatment of religious land uses differently than similar secular institutional land uses.
3. Substantially burdening a religious land use unless justified by a compelling and narrowly tailored state interest

The Federal Fair Housing Amendments' Act of 1988, at 42 U.S.C. §3601 (West 2003)

- This federal law extends the antidiscrimination provisions of federal civil rights statutes to the disabled and is made to apply to local government zoning programs.
- The law also establishes an affirmative obligation on governments and private housing providers to make reasonable accommodations in regard to rules, policies, and practices affecting access to housing by the disabled. Litigation under this statute affecting zoning controls is discussed in Chapter 13. *See generally* Edward H. Ziegler, 2 Rathkopf's *The Law of Zoning and Planning*, ch. 25 at 25.11 (4th ed. 2005 and Supp. 2012).

The National Manufactured Housing Construction and Safety Act of 1974, at 42 U.S.C.A. §5400 (West 2003)

- This law establishes a HUD code of building design and safety requirements for new manufactured housing and mobile homes, and the statute expressly preempts inconsistent state and local construction standards. In effect, local communities can no longer exclude manufactured housing based on health and safety building and design standards.
- Local zoning controls, however, (including park restrictions and even exclusion) are unaffected by this law. See *generally* Edward H. Ziegler, Rathkopf's *The Law of Zoning and Planning*, ch. 28 at 28.30 (4th ed. 2005 and Supp. 2012).

Federal Broadcasting Statutes and The Telecommunications Act of 1996, at 47 U.S.C.A. §332(c) (7) (West 2003)

These statutes preempt certain local controls on amateur home radio towers and satellite dishes (they can be locally regulated but not banned)

The statutes also establish a number of preempting standards for local control of wireless cellular towers and facilities, which, again, can be locally regulated but not banned. The statutes generally:

1. Prohibit local discrimination between functionally equivalent providers
2. Require that service be allowed in all areas of a community
3. Preempt local regulation involving the effects of nonionizing electromagnetic radiation.
4. Require that local permit decisions be in writing, supported by substantial evidence, and be made within a reasonable time. *See generally* Edward H. Ziegler, Rathkopf's *The Law of Zoning and Planning*, ch. 79 at 79.18 (4th ed. and Supp. 2012).

- *Federal Statutes on Aviation Safety and Noise.*
- Federal statutes are held by courts to preempt local regulation of aircraft flights, as well as aircraft safety or noise, including both large and small aircraft and large and small airports.
- Municipal proprietors generally are allowed to impose flight and noise controls on their own airport operations.
- The statutes also are held not to preempt local zoning that restricts airport location or that governs nearby land use and development. *See generally* Edward H. Ziegler, Rathkopf's *The Law of Zoning and Planning*, ch. 85 at 85.4 (4th ed. and Supp. 2012).

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