



## NORTH CAROLINA

### I. Summary of Home Rule in North Carolina

- North Carolina is a weak home rule state: cities and counties have broad police powers and limited authority to impose taxes. There are few constraints on the state’s ability to preempt local laws or restructure local governments.
- North Carolina courts recognize express, conflict, and field preemption.
- All incorporated cities and counties in North Carolina automatically enjoy statutory authority to locally select their form of government, management options, and personnel systems with no opt-in requirement.

### II. Source of Municipal Home Rule Authority

North Carolina Const. art. VII, § 1 allows the General Assembly to establish home rule for local governments, but it does not guarantee municipal home rule.

The Legislature has chosen to provide municipal home rule to cities and counties by statute.<sup>1</sup>

### III. Scope of Municipal Home Rule Authority

In most areas of municipal concern, the presumption against local authority to control local affairs is gone, with the legislature having abolished Dillon’s Rule in 1971, directing courts to “broadly construe”<sup>2</sup> any powers granted. State statute also directs courts to construe county grants of powers “to include any powers that are reasonably expedient to the exercise of the power” and construe city grants of power “to include any additional and supplementary powers that are reasonably necessary or expedient”.<sup>3</sup> The North Carolina Supreme Court has interpreted this provision as a rule of statutory construction rather than a directive unto itself, meaning that unambiguous grants of authority should be interpreted as written, and courts should only broadly construe local powers when an enabling statute is vague or unambiguous.<sup>4</sup>

#### *Police Powers*

The North Carolina General Assembly has statutorily granted municipalities broad police powers to by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to

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<sup>1</sup> N.C. Gen. Stat. § 153A (for counties); N.C. Gen. Stat. § 160A (for cities).

<sup>2</sup> N.C. Gen. Stat. §§ 153A-4 (for counties); 160A-4 (for cities).

<sup>3</sup> *Id.*

<sup>4</sup> *See, e.g., Lanvale Properties, LLC v. County of Cabarrus*, 731 S.E.2d 800, 809–10 (N.C. 2012).

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the health, safety, or welfare of its citizens and the peace and dignity of the city or county.<sup>5</sup> Since this grant of power is considered ambiguous, it must be interpreted broadly, with the caveat that “[t]o be sustained as a legitimate exercise of the police power, an ordinance that regulates trades or business must be rationally related to a substantial government purpose.”<sup>6</sup>

### *Taxation*

Cities and counties may only impose taxes that are “specifically authorized” by the legislature.<sup>7</sup>

## **IV. Preemption**

While North Carolina municipalities have broad initiative authority to enact local ordinances, those ordinances must “be in harmony with State law; whenever the two come into conflict, the former must bow to the latter.”<sup>8</sup> Additionally, municipalities may not “regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation.”<sup>9</sup>

### *Express Preemption*

Cities and counties may not “regulate a subject that cities are expressly forbidden to regulate by State or federal law.”<sup>10</sup>

### *Conflict Preemption*

Cities and counties may not enact ordinances that forbid or condition what State or federal law expressly permits, nor may they permit what State or federal law forbids.<sup>11</sup> For example, where the state expressly allows a business or individual permission to do business by granting them a license, municipalities cannot prevent them from performing the licensed activity.<sup>12</sup>

However, “[t]he fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or condition.”<sup>13</sup> Thus, the existence of state regulation of a particular issue does not necessarily imply that local regulations on the same issue are preempted.

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<sup>5</sup> N.C. Gen. Stat. §§ 153A-121(a) (for counties); 160A-174(a) (for cities).

<sup>6</sup> *King v. Town of Chapel Hill*, 758 S.E.2d 364, 370 (N.C. 2014) (internal quotation and citations omitted).

<sup>7</sup> N.C. Gen. Stat. §§ 153A-206 (for counties); 160A-206 (for cities).

<sup>8</sup> *King v. Town of Chapel Hill*, 758 S.E.2d at 373 (internal citation omitted).

<sup>9</sup> N.C. Gen. Stat. § 160A-174.

<sup>10</sup> N.C. Gen. Stat. § 160A-174(b)(4); *Craig v. County of Chatham*, 565 S.E.3d 172, 176 (N.C. 2002) (noting that the same preemption limitations that apply to cities also apply to counties).

<sup>11</sup> N.C. Gen. Stat. § 160A-174(b)(2)-(3); *Craig v. County of Chatham*, 565 S.E.3d at 176 (N.C. 2002).

<sup>12</sup> *Greene v. City of Winston-Salem*, 213 S.E.2d 231, 236–37 (referring to *Tastee-Freez, Inc. v. Raleigh*, 123 S.E.2d 632 (N.C. 1962) and *Staley v. Winston-Salem*, 128 S.E.2d 604 (N.C. 1962)).

<sup>13</sup> N.C. Gen. Stat. § 160A-174.

### *Field Preemption*

Field preemption occurs when “the General Assembly has expressed a clear legislative intent to provide . . . a complete and integrated regulatory scheme” that excludes local regulations.<sup>14</sup> The fact that a state law exists in a particular field “does not necessarily prevent a county [or city] from regulating in the same field.”<sup>15</sup>

To determine whether such an intent to preempt local regulations exists, courts examine “the spirit of the act[] and what the act seeks to accomplish.”<sup>16</sup> If a court cannot glean legislative intent from an act in isolation, it can look to other related statutes “so as to determine and effectuate the legislative intent.”<sup>17</sup> State regulations issued by government agencies may also constitute part of the legislative scheme that indicates a state intent to occupy a field of regulation.<sup>18</sup>

## **V. Local Legislative Immunity**

North Carolina has passed legislation guaranteeing that members of the state legislature “shall have freedom of speech and debate in the General Assembly, and shall not be liable to impeachment or question, in any court or place out of the General Assembly, for words therein spoken.”<sup>19</sup> However, this memo has identified no evidence that this protection has been extended to municipal legislators.

## **VI. Other Relevant Issues**

### *Prohibition on Local, Private, or Special Laws*

N.C. Const. art. II, § 24 forbids the General Assembly from enacting “any local, private, or special act or resolution” relating to the following subjects:

- health, sanitation, and the abatement of nuisances;
- names of cities, towns, and townships;
- layout, maintenance, or discontinuance of highways streets, or alleys;
- ferries or bridges;
- non-navigable streams;
- cemeteries;
- pay of jurors;
- erecting or changing the lines new townships or school districts;

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<sup>14</sup> *King*, 758 S.E.2d at 373 (internal quotation and citations omitted).

<sup>15</sup> *Craig v. County of Chatham*, 565 S.E.2d 172, 175 (N.C. 2002).

<sup>16</sup> *Id.* (internal quotation and citations omitted).

<sup>17</sup> *Id.* (internal quotation and citations omitted).

<sup>18</sup> *Green v. City of Winston-Salem*, 213 S.E.2d 231, 237 (N.C. 1975).

<sup>19</sup> N.C. Gen. Stat. § 25-1-101.

- remitting fines or fees going into the public treasury;
- regulating labor, trade, mining, or manufacturing;
- extending the time to collect taxes;
- giving effect to informal wills and deeds;
- granting individual divorces or alimony settlements; or
- altering names, legitimizing bastards, or restoring citizenship rights to persons convicted of a felony.

There is “no exact rule or formula capable of constant application [that] can be devised for determining in every case whether a law is local, private or special or whether general.”<sup>20</sup> Nevertheless, three tests have emerged in the years since N.C. Const. art. II, § 24 was adopted in 1916.

The first test that emerged considered the number of local governments affected by the state law.<sup>21</sup> Under this test, if the state law affected a majority of a particular type of local government, such as a county, then it was considered a general law; if not, then it was considered to be local.<sup>22</sup>

Next, the court developed the “reasonable classification” test, whereby a law will be upheld as a general law if “any rational basis reasonably related to the objective of the legislation can be identified which justifies the separation of units of local government into included and excluded categories.”<sup>23</sup> Despite the use of a rational basis language, the North Carolina Supreme Court has explained that the “reasonable classification” test requires more than the kind of hypothetical justifications permitted in the due process and equal protection context.<sup>24</sup> Instead, the test focuses on the actual purpose of the law, and only those purposes that are supported by the legislative record.<sup>25</sup> Moreover, the record must clearly establish why the targeted locality is so unique as to be treated differently from all others, and why the state law does not encompass the entire class of localities “to which such legislation would be necessary or appropriate having regard to the purpose for which the legislation was designed.”<sup>26</sup>

“Reasonable classification” now appears to be the primary test for determining whether a state law is general or local for purposes of N.C. Const. art. II, § 24. But the court has also used a third test that applies “a general public interest method of analysis, which focuses on ‘the extent to which the act in question affects the general public interests and concerns.’”<sup>27</sup> Though the

<sup>20</sup> *McIntyre v. Clarkson*, 199 S.E.2d 888, 893 (N.C. 1961).

<sup>21</sup> See *City of New Bern v. New Bern-Craven County Board of Education*, 450 S.E.2d 735, 738 (N.C. 1994)

<sup>22</sup> See *State v. Dixon*, 1 S.E.2d 521, 523 (N.C. 1939); *In re Harris*, 112 S.E. 425, 426–27 (N.C. 1922).

<sup>23</sup> *Williams v. Blue Cross Blue Shield of North Carolina*, 581 S.E.2d 415, 425 (N.C. 2003) (quoting *Adams v. N.C. Dep’t of Natural & Econ. Res.*, 249 S.E.2d 402, 407 (N.C. 1978)).

<sup>24</sup> See *City of Asheville v. State*, 794 S.E.2d 759, 771–72 (N.C. 2016).

<sup>25</sup> See *id.* at 772.

<sup>26</sup> See *id.* (quoting *City of Asheville v. State*, 665 S.E.2d 103, 126 (N.C. App. 2008)) (internal quotations omitted); see also *City of New Bern*, 450 S.E.2d at 740 (finding “no rational basis that justifies the separation of New Bern from all other cities in North Carolina for special legislative attention regarding the designation of an appropriate inspection department”).

<sup>27</sup> See *City of New Bern*, 450 S.E.2d at 739 (quoting *Town of Emerald Isle v. State of N.C.*, 360 S.E.2d 756, 763 (N.C. 1987)).

most lenient of all the test, it is used only when the state law is “site-specific” and applies solely to a specific portion of land that can only exist in one location.<sup>28</sup> Moreover, this “general public interest” test has thus far only been applied in one case and has not been used since.<sup>29</sup>

N.C. Const. art. II, § 24 does not limit *local* authority to enact regulations on the topics listed above, but serves only as a limitation on state legislative authority.<sup>30</sup> A local law would only be struck down pursuant to this provision if a court finds that a state enabling statute upon which a municipality relies to enact a local regulation violates the constitutional provision.<sup>31</sup>

### *Unfunded Mandates*

North Carolina does not appear to prohibit the General Assembly from imposing unfunded mandates on municipalities.

### *Single-Subject Rule*

North Carolina does not require bills to adhere to one subject.<sup>32</sup>

### *Private Law Exception*

An additional consideration in assessing whether a local government has the authority to adopt a particular policy is whether state law recognizes a “private law exception.” Private law can generally be defined as law that “establishes legal rights and duties between and among private entities.”<sup>33</sup> Some states, either by constitutional provision, statute, or case law, prohibit municipalities from regulating private law. This can take the form of a “subject-based” exception prohibiting any regulation of “private law” or a narrower exception prohibiting private rights of action.<sup>34</sup>

North Carolina law does not appear to prohibit home rule municipalities from enacting “private law.” A review of North Carolina case law did not identify court opinions adhering to a private law exception. North Carolina law has been described as “skeptical” regarding “local authority to create private rights of action.”<sup>35</sup>

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<sup>28</sup> See *City of Asheville*, 794 S.E.2d 769.

<sup>29</sup> See *id.*

<sup>30</sup> See, e.g., *King v. Town of Chapel Hill*, 758 S.E. 2d 364, 386 (reading N.C. Const. art. II, § 24 as a limitation on the power of the General Assembly to enact laws that “appl[y] only to counties and cities”).

<sup>31</sup> See *State v. Smith*, 143 S.E.2d 293, 297 (N.C. 1965).

<sup>32</sup> Michael D. Gilbert, *Single Subject Rules and the Legislative Process*, 67 U. Pitt. L. R. 804, 812 n. 41 (2006).

<sup>33</sup> Gary T. Schwartz, *The Logic of Home Rule and the Private Law Exception*, 20 UCLA L. Rev. 671, 688 (1973).

<sup>34</sup> See Paul A. Diller, *The City and the Private Right of Action*, 64 Stan. L. Rev. 1109 (2012).

<sup>35</sup> *Id.* at 1131.

## *Nature of State Emergency Powers*

The North Carolina Emergency Management Act lays out various powers and duties for the governor, state agencies, and local governments to address emergencies.<sup>36</sup>

The governor, for example, is authorized to “[m]ake, amend, or rescind the necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor [in the Act], with due consideration of the policies of the federal government.”<sup>37</sup> The governor is authorized to “utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the State and of the political subdivisions.”<sup>38</sup> The governor may also exercise broad powers like the ability to “establish a system of economic controls over all resources, materials, and services to include food, clothing, shelter, fuel, rents, and wages,” the power to “waive a provision of any regulation or ordinance of a State agency or a political subdivision which restricts the immediate relief of human suffering,” and the power to “perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population.”<sup>39</sup>

Counties are “responsible for emergency management within the geographical limits of [each] county,” and “[a]ll emergency management efforts within the county will be coordinated by the county, including activities of the municipalities within the county.”<sup>40</sup> Counties and incorporated municipalities are authorized to make appropriations for the purposes of the state’s Emergency Management Act and “to fund them by levy of property taxes . . . and by the allocation of other revenues, use of which is not otherwise restricted by law.”<sup>41</sup> In addition, each political subdivision may “appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency purposes and to provide for the health and safety of persons and property, including emergency assistance, consistent with [the Act].”<sup>42</sup>

Counties and municipalities are authorized to declare a state of emergency.<sup>43</sup> Such a declaration, in part, activates any ordinances authorized by N.C. Gen. Stat. Ann. § 166A-19.31. Under N.C. Gen. Stat. Ann. § 166A-19.31, a municipality or county “may enact ordinances designed to permit the imposition of prohibitions and restrictions within the emergency area during a state of emergency.”<sup>44</sup> The statute authorizes a range of prohibitions and restrictions, including those related to the “ingress and egress” of an emergency area, “the operation of offices, business establishments, and other places to or from which people may travel or at which they may

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<sup>36</sup> N.C. Gen. Stat. Ann. § 166A-19 et seq.

<sup>37</sup> N.C. Gen. Stat. Ann. § 166A-19.10.

<sup>38</sup> *Id.*

<sup>39</sup> N.C. Gen. Stat. Ann. § 166A-19.30.

<sup>40</sup> N.C. Gen. Stat. Ann. § 166A-19.15.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> N.C. Gen. Stat. Ann. § 166A-19.22.

<sup>44</sup> N.C. Gen. Stat. Ann. § 166A-19.31.

congregate,” and “[u]pon other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.”<sup>45</sup>

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<sup>45</sup> *Id.*