



Overview of Local Authority & Preemption for Advocates in Arizona

This document provides a summary of local authority and preemption in Arizona that can inform advocates' efforts to adopt new policies at the city or county level. State preemption laws limit or prohibit local policymaking in different areas. In addition to an overview of how local authority operates in Arizona, this document provides examples of important policies that are preempted (i.e., prohibited), emergency powers that may be available to local officials, examples of key COVID-19 policies that local governments in Arizona appear to have the power to implement, and ways in which advocates may expand their local authority through repeal of existing preemption and/or voter-initiated ballot measures.¹

I. Summary of Home Rule in Arizona

- Arizona has four main kinds of municipalities: counties, towns, general law cities, and charter (or home rule) cities. Counties and general law cities are Dillon's Rule jurisdictions, meaning that they can only exercise the powers expressly granted to them by state law. Charter cities enjoy a constitutional grant of home rule authority, which means that they can generally enact any kind of regulation that does not conflict with state law.
- Charter cities enjoy immunity from preemption in matters of purely local concern, but courts have interpreted the scope of "matters of local concern" very narrowly, so the term currently may only apply to matters relating to local elections.
- Arizona courts recognize three kinds of preemption: express, conflict, and field.
- Arizona's SB 1487 allows legislators to require the attorney general to investigate whether a local policy is preempted by state law.² If the attorney general concludes that a local policy is preempted, the local government has 30 days to resolve the violation or the attorney general must order the withholding of state funding, a risk that some cities may not be willing to take. If the attorney general believes that state law "may" preempt a local law, SB 1487 requires the attorney general to file a special action in the Arizona Supreme Court, and it also requires the Arizona Supreme Court to impose a bond requirement on cities defending their local policy (equivalent to state shared revenue paid to the city in the preceding six months). Notably, however, a recent Arizona Supreme Court decision has found that bond requirement unenforceable.³

II. What Policies Are Preempted in Arizona?

¹ The information provided in this document does not, and is not intended to, constitute legal advice. Individuals and organizations should contact an attorney licensed to practice in their state to obtain advice with respect to a particular legal matter.

² SB 1487 (2016), <https://www.azleg.gov/legtext/52leg/2r/laws/0035.PDF>.

³ State of Arizona, Ex. Rel. Mark Brnovich v. City of Phoenix, Special Action Jurisdiction Accepted; Relief Denied Declaring Statutory Bond Provision Unenforceable (Aug. 3, 2020) (Case No. CV-20-0019-SA).

The following are examples of subject areas where the state has expressly preempted local action:

- Prevailing wage⁴
- Classifying marketplace contractors (gig workers) as employees⁵
- Private sector predictive scheduling⁶
- Project labor agreements or apprenticeship programs⁷
- Mandatory inclusionary housing⁸
- Rent control⁹
- Short-term rentals¹⁰
- Transportation network companies¹¹
- Sanctuary city policies¹²
- Fees or taxes on disposable containers¹³
- Firearms¹⁴

It should be noted that since the state's minimum wage was raised by ballot initiative and since ballot measures are protected from legislative interference (see Section III, below, on the Voter Protection Act), it would be very difficult for the state to preempt local minimum wage or paid sick leave policies.¹⁵

III. Other Issues Affecting State Preemptive Authority

⁴ A.R.S. § 34-321.

⁵ A.R.S. § 23-1603.

⁶ A.R.S. § 23-205.

⁷ A.R.S. § 34-321.

⁸ A.R.S. § 9-461.16.

⁹ A.R.S. § 22-1329.

¹⁰ A.R.S. § 9-500.39.

¹¹ A.R.S. § 28-142.

¹² A.R.S. § 11-1051.

¹³ A.R.S. § 9-500.38.

¹⁴ A.R.S. § 13-3108.

¹⁵ See *Meyer v. State*, 436 P.3d 511 (Ariz. Ct. App. 2019).

- **Immunity from Preemption in Matters of Local Concern:**

- The Arizona Supreme Court has consistently stated that in matters of solely local concern, a charter city’s ordinance supersedes a conflicting state statute.¹⁶ After the Arizona Supreme Court’s decision in *State ex rel. Brnovich v. Tucson*, the only clear area of local concern is around local elections.¹⁷

- **The Voter Protection Act:**

- In 1998, Arizona voters approved Proposition 105, or the Voter Protection Act (VPA), which prevents the legislature from tampering with successful ballot initiatives.¹⁸ The VPA prohibits the governor from vetoing an initiative or referendum; prohibits the state legislature from repealing an initiative or referendum; requires any amendment of an initiative or referendum to occur by a three-fourths majority of votes and only if the amendment “furthers the purposes of such measure;” and prohibits the legislature from appropriating or diverting funds allocated to a particular purpose by an initiative or referendum.¹⁹
- Since the 2006 ballot measure raising Arizona’s minimum wage included a provision empowering localities to regulate minimum wages and benefits, the state has been unable to preempt local minimum wage increases and local paid sick leave policies.²⁰
- While this strategy could be used in the future to limit legislative meddling in grants of local power, the legislature has passed laws that make it difficult to gather sufficient signatures to get voter-led initiatives on the ballot, and the Supreme Court has kicked other progressive ballot initiative off the ballot for allegedly confusing descriptions.

- **SB 1487:**

- In 2016, the Arizona legislature enacted Senate Bill 1487, which allows the state legislature to cut off state funding to cities attempting to pass preempted policies.²¹
- Under this law, one (or more) state legislators may request that the Attorney General investigate any ordinance that the legislator alleges violates state law or the Arizona Constitution.

¹⁶ *Price v. State*, 3 P.2d 1114 (Ariz. 1931); *Clayton v. State*, 297 P. 1037 (Ariz. 1931); *Strode v. Sullivan*, 236 P.2d 48, 51 (Ariz. 1951); *City of Tucson v. Consumers for Retail Choice Sponsored by Wal-Mart*, 5 P.3d 934 (Ariz. Ct. App. 2000).

¹⁷ *State ex rel. Brnovich v. Tucson*, 399 P.3d 663, 677 (Ariz. 2017).

¹⁸ Ariz. Const. art. IV, Pt. 1, § 1(6).

¹⁹ *Id.*

²⁰ *Meyer v. State*, 436 P.3d 511, 518.

²¹ A.R.S. § 41-194.01 (2016).

- If the Attorney General finds conclusively that the ordinance does violate state law, the city has 30 days to cure the violation, after which time the Attorney General will order the state treasurer to withhold state shared revenue from the city until the ordinance is repealed.
- If the Attorney General finds that a municipal ordinance *may* violate state law, he or she must file a special action in the Arizona Supreme Court to determine whether or not the ordinance is preempted. State law states that during this action, the Supreme Court must require the city to pose a bond equal to six months of its state shared revenue. The Arizona Supreme Court has found this bond requirement unenforceable, however.²²

IV. Emergency Powers in Arizona

- During a state of emergency, counties, cities, and towns under Ariz. Stat. Ann. § 26-307 “may make, amend and rescind orders, rules and regulations necessary for emergency functions,” so long as those regulations are not inconsistent with those issued by the Governor.²³ This section also states that once an order, rule, or regulation issued by a “governing body of a county or other political subdivision” is “filed in the office of the clerk of the political subdivision,” that order, rule or regulation becomes effective.²⁴ At that point, “[e]xisting laws, ordinances, orders, rules and regulations in conflict with [the Emergency Management Act] or orders, rules or regulations issued under authority of [the Emergency Management Act] are suspended during the time and to the extent that they conflict.”^{25,26}
- In a state of war emergency, counties, cities, and towns may “waive procedures and formalities otherwise required” as they pertain to certain enumerated topics, including entering into contracts, incurring obligations, and expending public funds.²⁷ They may undertake these actions even if the state emergency plans and programs do not give them specific authority to do so.²⁸
- In the case of a local emergency due to “fire, conflagration, flood, earthquake, explosion, war, bombing, acts of the enemy, or any other natural or man-made calamity or disaster or . . . riots, routs, affrays, or other acts of civil disobedience which endanger life or property within the city,” a mayor or chairman of the board of supervisors may declare a

²² State of Arizona, Ex. Rel. Mark Mrnovich v. City of Phoenix, Special Action Jurisdiction Accepted; Relief Denied Declaring Statutory Bond Provision Unenforceable (Aug. 3, 2020) (Case No. CV-20-0019-SA).

²³ Ariz. Stat. Ann. § 26-307(A).

²⁴ Ariz. Stat. Ann. § 26-307(b).

²⁵ *Id.*

²⁶ Ariz. Stat. Ann. § 26-307(D) also states that “[i]n the absence of specific authority in state emergency plans and programs, the governing body of each county, city and town of the state shall take emergency measures as deemed necessary to carry out the provisions of this chapter.” Ariz. Stat. Ann. § 26-307(D).

²⁷ Ariz. Stat. Ann. § 26-307(C).

²⁸ Ariz. Stat. Ann. § 26-307(D).

state of local emergency and have “authority to impose all necessary regulations to preserve the peace and order of the city, town, or unincorporated areas of the county.”²⁹

V. Examples of Key COVID-19 Policies That Charter Cities May Have Authority to Adopt

- Paid sick leave (as noted in Part III, local paid sick leave is not preempted in Arizona and is protected by the Voter Protection Act)
- Minimum wages or premium pay (as noted in Part III, local minimum wages are not preempted in Arizona and are protected by the Voter Protection Act)
- Broadband access³⁰
- Worker health and safety ordinance to protect workers from contracting COVID-19, such as mask requirements³¹ (Note: Governor Ducey has announced that his Executive Orders do not stand in the way of local mask mandates.³²)
- Control of public residential housing rent
- Prohibit landlords (of non-mobile homes) from collecting unreasonable late fees
- Require rental agreements to allow tenants to terminate their lease without penalties during the COVID crisis

(For additional support and analysis, please contact LSSC).

²⁹ Ariz. Stat. Ann. § 26-311.

³⁰ Arizona municipalities likely have the authority to build broadband networks or related infrastructure to improve Internet access generally or for specific populations. Arizona is not considered to have state laws that restrict municipal broadband. See Baller Stokes & Lide, *State Restrictions on Community Broadband Services or Other Public Communications Initiatives* (July 1, 2020), <https://www.baller.com/wp-content/uploads/BallerStokesLideStateBarriers7-1-20.pdf>.

³¹ For a model policy to protect workers from COVID at the state or local level, see the National Employment Law Project’s new guide: *Protecting Worker Safety & Health in the COVID Crisis: A State & Local Model Policy Response* (available at <https://s27147.pcdn.co/wp-content/uploads/Protecting-Worker-Safety-Health-COVID-State-Local-Policy-Response.pdf>).

³² ADI Staff Reporter, *Arizona Cities, Towns Announce Plans to Mandate Face Masks Or Not*, *Arizona Daily Independent News Network*, June 18, 2020, <https://arizonadailyindependent.com/2020/06/18/arizona-cities-towns-announce-plans-to-mandate-face-masks-or-no/>. Also, local attorneys, legal scholars, and Pima County have argued that Arizona cities have authority to adopt public health orders that are “in addition” to Executive Order 2020-36 under their broad emergency and public health powers. See Josh Bendor and Erin Scharff, *Gov. Doug Ducey is Wrong. Cities and Counties Have Broad Authority to Act on COVID-19*, *AZ CENTRAL*, July 9, 2020, <https://www.azcentral.com/story/opinion/op-ed/2020/07/09/gov-doug-ducey-wrong-arizona-cities-broad-power-act-coronavirus/5396125002/>; Pima County Attorney Civil Division, Letter “Re: Notice of Investigation Under A.R.S. § 41-194.01 and Request for Response” (May 22, 2020), https://www.azag.gov/sites/default/files/docs/complaints/sb1487/20-001/SB_1487_response.pdf.

VI. Repealing Preemption in Arizona – Information & Rules for Bill Drafting

- During a time of crisis—and beyond—there may be opportunities to repeal state preemption of local authority. One example was a recent effort to repeal preemption around plastic bag bans.³³
- Some procedural considerations for repeal include:
 - **Single Subject & Clear Title Rule:**
 - Arizona’s constitution prohibits the Legislature from enacting a law that encompasses more than one subject and requires the subject to be stated in the statute’s title.³⁴ The single subject and title provision is interpreted liberally by courts and a statute is to be upheld if there is any legal basis for its validity.³⁵ If possible, an unrelated, unconstitutional portion of an Act may be severed and declared invalid to preserve the validity of the remainder of the law.³⁶
 - It is possible that a preemption repeal bill may address preemption of a variety of subject areas as long as all subjects are tied to the expansion or clarification of local authority, but advocates should consult with an attorney who can provide advice on the best approach in order to comply with the single subject and clear title rule.
 - **Repealing & Granting Affirmative Authority:**
 - Nothing in state law precludes a bill that repeals existing preemption legislation to also grant localities affirmative authority to legislate in a particular area, but advocates should consult with an attorney or legislative sponsor who can consult with legislative staff on bill drafting practices in Arizona.
- For more information on efforts to repeal preemption and lessons learned from successful campaigns in other states, including sample model language, see [this report](#)³⁷ from the Local Solutions Support Center and the National Employment Law Project.

³³ H.B. 2497, 54th Reg. Leg. Sess. (2019).

³⁴ Ariz. Const. art. IV, Pt. 2, § 13.

³⁵ See *Save Our Vote, Opposing C-03-2012 v. Bennett*, 291 P.3d 342 (Ariz. 2013); *State v. Sutton*, 565 P.2d 1278 (Ariz. 1977) (en banc).

³⁶ See *State v. Coursey*, 71 Ariz. 227 (Ariz. 1951).

³⁷ Laura Huizar, Local Solutions Support Center and National Employment Law Project, *Repealing Preemption: Defending Local Democracy Now Includes A Growing Focus on Recovering Lost Local Authority* (Dec. 2019), <https://www.abetterbalance.org/wp-content/uploads/2020/01/White-Paper-Repealing-Preemption-FINAL.pdf>.

VII. Is There A Ballot Measure Process in Arizona?

- Arizona residents can adopt new statewide laws and constitutional amendments by ballot measure.³⁸
 - **Single Subject Rule:** The state’s single subject rule does not apply to voter-initiated legislation, so ballot initiatives can contain more than one subject.³⁹
 - **Revenue Source Rule:** If an Arizona ballot initiative requires the state to expend funds, it must establish a funding source other than the general fund for that purpose.⁴⁰
- The Arizona Constitution also allows citizens to propose local measures by initiative.⁴¹
- State law provides that residents can adopt or amend local ordinances by local ballot initiative process.⁴²

VIII. What Organizations Are Fighting Preemption and Supporting Local Democracy?

Advocates interested in working with other organizations in Arizona focused on protecting local democracy and strengthening local authority can email LSSC@supportdemocracy.org.

For additional support, please contact The Local Solutions Support Center at LSSC@supportdemocracy.org.

³⁸ Ariz. Const. art. IV, § 1(2).

³⁹ *Ariz. Chamber of Commerce & Industry v. Kiley*, 399 P.3d 80, 88 (Ariz. 2017).

⁴⁰ Ariz. Const. art. IX, § 23.

⁴¹ Ariz. Const. art. IV, § 1(8).

⁴² A.R.S. § 19-141.