

COLORADO

CONSTITUTIONAL AND STATUTORY PROVISIONS

Colorado Constitution

- Art. XX, § 6. Home rule for cities and towns.

The people of each city or town of this state, having a population of two thousand inhabitants as determined by the last preceding census taken under the authority of the United States, the state of Colorado or said city or town, are hereby vested with, and they shall always have, power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters. Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith.

. . . From and after the certifying to and filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this article, such city or town, and the citizens thereof, shall have the powers set out in sections 1, 4 and 5 of this article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control:

- a. The creation and terms of municipal officers, agencies and employments; the definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employees;
- b. The creation of police courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of police magistrates therefor;
- c. The creation of municipal courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of the officers thereof;
- d. All matters pertaining to municipal elections in such city or town, and to electoral votes therein on measures submitted under the charter or ordinances thereof, including the calling or notice and the date of such election or vote, the registration of voters, nominations, nomination and election systems, judges and clerks of election, the form of ballots, balloting, challenging, canvassing, certifying the result, securing the purity of elections, guarding against abuses of the elective franchise, and tending to make such elections or electoral votes non-partisan in character;
- e. The issuance, refunding and liquidation of all kinds of municipal obligations, including bonds and other obligations of park, water and local improvement districts;
- f. The consolidation and management of park or water districts in such cities or towns or within the jurisdiction thereof; but no such consolidation shall be effective until approved by the vote of a majority, in each district to be consolidated, of the qualified electors voting therein upon the question;

g. The assessment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for municipal purposes and special assessments for local improvements; such assessments, levy and collection of taxes and special assessments to be made by municipal officials or by the county or state officials as may be provided by the charter;

h. The imposition, enforcement and collection of fines and penalties for the violation of any of the provisions of the charter, or of any ordinance adopted in pursuance of the charter.

It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right. The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters. All provisions of the charters of the city and county of Denver and the cities of Pueblo, Colorado Springs and Grand Junction, as heretofore certified to and filed with the secretary of state, and of the charter of any other city heretofore approved by a majority of those voting thereon and certified to and filed with the secretary of state, which provisions are not in conflict with this article, and all elections and electoral votes heretofore had under and pursuant thereto, are hereby ratified, affirmed and validated as of their date.

HOME RULE STRUCTURE

The overall effect of the home rule amendment to the state constitution is twofold: first, to grant to home rule municipalities the power the legislature previously had, and second, to limit the authority of the legislature with respect to local and municipal affairs in home rule cities.¹ In matters of statewide or mixed local/statewide concern, the state law will prevail if it occupies the field or conflicts with the city ordinance.²

IMMUNITY FROM STATE PREEMPTION

Colorado is among the states that provide the strongest immunity to preemption in its constitution. The key inquiry for the Colorado courts is whether the potentially preempted local policy, ordinance, or charter provision regulates a local, mixed, or statewide concern. Since the constitution guarantees that city regulation of “local and municipal matters” will trump state law, the courts must inquire whether a particular challenged ordinance fits within this category. The Colorado courts make the determination on a “case-by-case basis,” using the following factors:

¹ Fraternal Order of Police, Colorado Lodge No. 27 v. City and County of Denver, 926 P.2d 582, 587 (Colo. 1996).

² City of Northglenn v. Ibarra, 62 P.3d 151, 163 (Colo. 2003) (occupation of field); City of Longmont v. Colo. Oil & Gas Ass’n, 369 P.3d 573, 579 (Colo. 2016) (conflict).

- (1) the need for statewide uniformity of regulation;
- (2) the impact of the municipal measure on individuals living outside the municipality;
- (3) historical considerations concerning whether the subject matter of the municipal measure is one traditionally governed by state or local government; and
- (4) whether the state Constitution specifically commits the particular matter to state or local regulation.³

A particular matter may be one of mixed concern when sufficient state interests are implicated, so that a state statute supersedes a conflicting home-rule city's ordinance, even if the city has considerable local interests at stake. This does not mean that every time the state is able to suggest a plausible interest in regulating a matter to the exclusion of home-rule cities that it should be characterized as one of mixed concern.⁴ A minor interest by the state usually will not be sufficient to overcome local regulation. In a case involving significant mixed state and local concerns, the Colorado Supreme Court found that a local ordinance prohibiting unrelated registered sex offenders from living together in a single-family residence was inconsistent with and thus preempted by the state laws intended to promote the use of state-regulated group homes to promote foster care for adjudicated delinquent children.⁵

Prominent recent cases have recognized local immunity in the context of municipal employees,⁶ but rejected such assertions in the contexts of a city ban on fracking and a municipal inclusionary zoning provision.⁷ In both of these latter instances, the Colorado Supreme Court held that state law validly preempted the local policy. In the inclusionary zoning case, a strong dissent by Justice Mullarkey argued that the city's choice should be protected.⁸

Given the fact-specific and ad-hoc nature of the local-versus-state-concern analysis, local governments and advocates would likely benefit from developing a persuasive factual record supported by expert analyses of the limited or positive extraterritorial effects of local policies.⁹ However, if a court finds the matter is of mixed state and local concern, the preemption analysis "in virtually all cases . . . will involve a facial evaluation of the respective statutory and regulatory schemes, not a factual inquiry as to the effect of those schemes 'on the ground.'"¹⁰

³ *Id.* at 580.

⁴ *City of Commerce City v. State*, 40 P.3d 1273, 1280 n.15 (Colo. 2002).

⁵ *Northglenn*, 62 P.3d at 163.

⁶ *Id.* (striking down state-imposed training standards for deputy sheriffs).

⁷ *City of Longmont* 369 P.3d at 573 (upholding state prohibition of local fracking bans); *Town of Telluride v. Lot Thirty-four Venture, LLC*, 3 P.3d 30 (Colo. 2000) (holding that state ban on local rent control ordinances overrode city inclusionary zoning requirement).

⁸ *Id.* at 47 ("Because Telluride's interests so significantly outweigh those of the state, I would hold that [the ordinance] constitutes legislation of a matter of local concern.").

⁹ See Michelle Wilde Anderson, *Between State and Local*, 86 DENV. U. L. REV. 1303, 1308 (2009) (arguing for the invalidation of local laws "only if they 'directly' cause a 'significant' outcome outside city borders").

¹⁰ *City of Longmont*, 369 P.3d at 583.