

# NAVIGATING STATE LAW IN LOCAL CLIMATE ACTION ARIZONA



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**About this Document:** This is an excerpt of a longer report, *Navigating State Law in Local Climate Action*, which covers nineteen states. The excerpt below contains the report's introduction, along with information and analysis related only to Arizona. The full report, as well as other state-specific reports, are available in Columbia Law School's [Scholarship Archive](#).

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# INTRODUCTION

Local governments are well-positioned to lead the fight against climate change by reducing community-wide greenhouse gas emissions, promoting renewable energy resources, and otherwise advancing climate mitigation and adaptation goals. Many local governments have already taken actions, and there is more they can do. In taking action to mitigate and adapt to the climate crisis, local governments must be aware of and act consistently with preemptive state laws that limit their authority. This report provides state-by-state information, resources, and analysis for nineteen states on key state-local preemption issues.

## 1. CROSS-CUTTING THEMES

The courts, constitutions, and statutes of each state handle the balance of power between the state and its local governments differently. But broadly, all seek to offer local governments some degree of autonomy, usually expressed as a variety of “home rule,” while preserving ultimate authority in the state itself. The specific ways in which the states wield their authority are similarly varied, but they usually include both instances where the state passes laws that withdraw whole fields from local regulatory authority, and ones in which states broadly regulate in an area but allow local governments latitude to regulate so long as there is no conflict between the two. The sections below provide general background on the kinds of considerations that shape the relationship between states and local governments, and the chapters that follow expand on each in the context of particular states.

## 2. SCOPE

The states covered in this report are ones within which the authors have ongoing research projects and partnerships. They represent several of the “swing” states that are the most closely politically divided, ones where control of the state is split between political parties, and others—like Texas and Florida—where legislatures have taken particularly noteworthy steps to preempt local climate law. For each state covered, the chapters highlight the sources of local authority to regulate and the limits imposed by the state, including: (1) constitutional and statutory delegations of home rule authority and police powers to local governments; (2) state law governing the nature and content of home rule charters, as well as preemption of local law generally; (3) a catalog of current state laws that may preempt local climate action; (4) leading case law on home rule and preemption of local law; (5) where applicable, information on recent and ongoing litigation; (6) a summary of how the state handles building codes; (7) discussion of legal considerations related to public utilities; (8) helpful secondary sources; and (9) additional relevant information.

Many of the issues presented in each state’s preemption case law section in this report arise outside the environmental, energy, and climate context. This is intentional, as case law that specifically discusses climate-related preemption measures is too limited to fully illustrate the doctrines through which courts would likely

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consider those cases. We would not be able to explain state-specific preemption doctrines by only examining cases that are topically relevant.

These resources are intended to help local governments, policymakers, city attorneys, academics, advocates, and other stakeholders craft resilient climate policies, anticipate and respond to preemption challenges, and mobilize public engagement. The information provided is not exhaustive—it is intended instead as a starting point and a guide to the topics most relevant to state-local preemption. Links to publicly available versions of the constitutional provisions, statutes, and cases cited are provided where those are available.

### 3. HOME RULE AND THE POLICE POWER

Determining whether a local government may take a particular action involves a two-part inquiry, asking first whether the locality has the authority to legislate on a given issue, and second whether the state has preempted local governments from exercising that authority. The scope of local governments' authority to legislate is significantly shaped by the extent to which their states have allowed for home rule.

Home rule is a constitutional or statutory delegation of authority from a state to its local governments, permitting them to govern within their jurisdictions and adopt laws, regulations, and policies across a broad range of subjects.<sup>1</sup> In the vast majority of states, this “commitment to local lawmaking capacity [is] codified in [state] constitutions and statutes.”<sup>2</sup> The core purpose of home rule is to empower local governments to act independently on local matters, so long as their actions are not inconsistent with state law, the state constitution, or their own home rule charters.<sup>3</sup> Today, all but three states provide some level of home rule—forty-one via the state's constitution and six through statute.<sup>4</sup>

Local action in states without a home rule system is cabined by an approach that was first described by Iowa Supreme Court Chief Justice John Dillon, and which has come to be known as Dillon's Rule. Under that approach, courts considering the scope of local governments' authority recognize only those powers that “are essential to municipal government or that the state has explicitly given to them, including any powers that are necessary for or implied by those explicitly given powers.”<sup>5</sup> When Dillon's Rule applies, local governments' ability to regulate is more restricted.

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<sup>1</sup> See Paul Diller, *Intrastate Preemption*, 87 B.U. L. REV. 1113, 1124 (2007) (describing home rule as “a system of state and local relations that gives some degree of permanent substantive lawmaking authority to localities beyond that which was provided by the traditional Dillon's Rule regime.”); NAT'L LEAGUE OF CITIES, PRINCIPLES OF HOME RULE FOR THE 21<sup>ST</sup> CENTURY (2020), <https://perma.cc/A3VP-NXZZ>.

<sup>2</sup> Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 2011 (2018), <https://perma.cc/3B53-S66J>.

<sup>3</sup> See NAT'L LEAGUE OF CITIES, *supra* note 1.

<sup>4</sup> See Briffault, *supra* note 2.

<sup>5</sup> See *City of Clinton v. Cedar Rapids & Missouri Railroad Co.*, 24 Iowa 455 (1868).

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Home rule’s “primary purpose and [] principal effect . . . has been to undo Dillon’s Rule” and empower local governments to legislate proactively, without prior state approval.<sup>6</sup> However, even in states with expansive home rule systems, local authority is limited by the almost absolute power of state preemption.<sup>7</sup>

## 4. PREEMPTION

Broadly speaking, preemption is a legal doctrine that allows the federal or a state government to restrict or eliminate the authority of lower levels of government in a specific policy area.<sup>8</sup> There are three ways a state can preempt local action: (1) expressly through clear statutory language (known as “express preemption”); (2) by demonstrating the state’s legislative intent to occupy a whole field of regulation (known as “field preemption”); or (3) by enacting state laws that conflict with local ones (known as “conflict preemption”).<sup>9</sup> State governments can employ all or a mixture of preemption methods, depending on the state.

While related, home rule and preemption are distinct legal doctrines. Strong home rule increases baseline local authority but it does not limit a state’s power to preempt particular laws or fields of regulation. Further, a municipality is generally only affected by preemption to the extent that its actions cross into areas of state concern. Home rule should be viewed as a source of local initiative, while preemption as a legal boundary.

Many state courts liberally construe home rule authority and avoid finding preemption under certain conditions. A few states, like Ohio, have even reined in state power in order to protect local lawmaking.<sup>10</sup> In *City of Canton v. State*, the Supreme Court of Ohio held that “a state law preempting local regulation cannot merely block local action but must include some substantive replacement regulation.”<sup>11</sup> Home rule has developed differently in each state, resulting in a patchwork of fifty distinct and nuanced systems of local power.

## 5. KEY ENVIRONMENTAL, ENERGY, AND CLIMATE CASES

In most states, there is relatively little preemption case law specific to environmental issues. Where there are cases, they are not broadly applicable because of each state’s unique home rule and preemption frameworks. As a result, many of the issues discussed in each state’s preemption case law section fall outside the environmental, energy, and climate context. That said, some state courts have decided significant preemption disputes in the environmental, energy, and climate sectors. Even though each state’s decisions are not binding on other states, courts in states in which there is little applicable case law may find these examples persuasive:

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<sup>6</sup> See Briffault, *supra* note 2, at 2012.

<sup>7</sup> *Id.*; Diller, *supra* note 1, at 1126–27.

<sup>8</sup> See *Arizona v. United States*, 567 U.S. 387, 398–99 (2012) (explaining the principle of supremacy).

<sup>9</sup> See *Holt’s Cigar Co. v. City of Philadelphia*, 608 Pa. 146, 153 (2011).

<sup>10</sup> See, e.g., *City of Canton v. State*, 95 Ohio St. 3d 149, 151–52 (Ohio 2002).

<sup>11</sup> See Briffault, *supra* note 2, at 2013; *City of Canton*, 95 Ohio St. 3d at 152–53.

- **Buildings:** [Glen Oaks Village Owners, Inc. v. City of New York](#), No. 42, 2025 WL 1458090 (N.Y. May 22, 2025) (holding that New York State’s climate law, the Climate Leadership and Community Protection Act (CLCPA), does not field preempt Local Law 97, New York City’s building performance standards);
- **Oil & Gas:** [Wallach v. Town of Dryden](#), 23 N.Y.3d 728 (2014) (holding that New York’s Oil, Gas and Solution Mining Law does not preempt local zoning laws that ban oil and gas production activities, including hydrofracking);
- **Renewable Energy:** [Town of Copake v. New York State Off. of Renewable Energy Siting](#), 191 N.Y.S.3d 181 (N.Y. App. Div. 3d Dept. 2023) (upholding the discretionary authority of New York State’s Office of Renewable Energy Siting to override local restrictions on major renewable energy facilities when such a restriction is “unreasonably burdensome in view of the [CLCPA targets](#) and the environmental benefits” of the facility); and
- **Utilities:** [StopAquila.Org v. Aquila](#), 180 S.W.3d 24 (Mo. Ct. App. 2005) (holding that state public utilities law does not preempt local zoning law); [PPL Electric Utilities v. City of Lancaster](#), 214 A.3d 639 (Pa. 2019) (state public service law field preempted a municipal ordinance that imposed additional controls on state-regulated public utilities for the use of the municipality’s rights-of-ways); [Boston Edison Co. v. City of Boston](#), 459 N.E.2d 1231, 1234 (Mass. 1984) (holding that local ordinances that regulate utilities are broadly preempted by comprehensive state legislation that occupies the field of utility regulation); [Boston Gas Co. v. City of Somerville](#), 652 N.E.2d 132 (Mass. 1995) (holding a local ordinance was preempted by state law governing the sale of gas and electricity by public utilities because the ordinance imposed additional requirements on gas companies that were inconsistent with the state law).

## 6. THE POLITICS OF PREEMPTION

Preemption exists in every state and, as a legal concept, is content neutral. States have used their preemptive powers across diverse subject matters including, for example, laws that restrict local taxation authority,<sup>12</sup> ones that regulate alcohol ordinances,<sup>13</sup> and others that occupy the field of firework regulation.<sup>14</sup> Historically, preemption “consisted of a judicial determination of whether a local law conflicted with preexisting state law.”<sup>15</sup> Over the past two decades, though, state legislatures have aggressively and frequently used preemption to enact sweeping statutes barring “local efforts to address a host of local actions.”<sup>16</sup> This trend, sometimes referred to as “New Preemption,” is characterized deregulatory action against larger, often progressive cities—either to prevent the enactment of certain ordinances or to retaliate against those already passed.<sup>17</sup> A quintessential example of this style of preemption occurred in 2016, when Alabama enacted legislation preempting local

<sup>12</sup> See, e.g., [Mayor of Ocean Springs v. Homebuilders Ass’n of Mississippi](#), 932 So. 2d 44 (Miss. 2006).

<sup>13</sup> See, e.g., [State v. Williams](#), 283 N.C. 550 (1973).

<sup>14</sup> See, e.g., [People v. Bahnke](#), 2024 WL 647931 (Mich. App. Feb. 15, 2024).

<sup>15</sup> See Briffault, *supra* note 2, at 1997.

<sup>16</sup> *Id.*

<sup>17</sup> See generally Briffault, *supra* note 2.

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minimum wage regulation just two weeks after Birmingham passed an increase.<sup>18</sup> On the climate front, one of the most replicated state preemption laws has been the so called “ban on natural gas bans,” which swept through conservative states after Berkeley, California enacted an ordinance prohibiting natural gas piping in new construction in 2019.<sup>19</sup> Recent preemption of local climate-related laws fits squarely within the framework of New Preemption, with conservative-led states increasingly targeting climate-related initiatives led by progressive city governments.

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There is an observable trend towards state governments seeking to preempt local climate-related actions, but how and to what extent states will succeed in that effort depends on specific circumstances and varies significantly by state. The following chapters offer a state-by-state primer on state preemption of local action in nineteen states, with particular attention to climate considerations.

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<sup>18</sup> See Yuki Noguchi, *In Battle Pitting Cities Vs. States Over Minimum Wage, Birmingham Scores A Win*, NAT. PUB. RADIO (July 27, 2018), <https://perma.cc/82SY-KUXS>.

<sup>19</sup> Berkeley’s ordinance was later repealed after losing a federal preemption challenge in federal court. See [Cal. Restaurant Ass’n v. City of Berkeley](#), 89 F.4th 1094 (9th Cir. 2024); BERKELEY, CAL., CITY CODE § 12.80 (repealed by Ord. No. 7907-NS (2024)).

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ARIZONA

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## 1. DELEGATION OF HOME RULE AUTHORITY AND POLICE POWER

Arizona cities' power to adopt charters is drawn from the state's constitution. Statutes and other case law expanding on the constitution's general grant of authority to adopt charters clarify the scope of the authority that such charters give a city. Arizona cities with populations of greater than 3,500 are authorized to adopt home-rule charters and some autonomy over their local affairs. Nineteen Arizona cities have done so.

### 1.1 Constitutional Provisions

Arizona cities above a population threshold of 3,500 people are empowered to adopt charters and become home rule cities. See [Ariz. Const. art. XIII, § 2](#) ("Any city containing, now or hereafter, a population of more than three thousand five hundred may frame a charter for its own government consistent with, and subject to, the Constitution and the laws of the state."); [State ex rel. Brnovich v. City of Tucson](#), 484 P.3d 624, 626 (Ariz. 2021) ("Once ratified by the city's voters and approved by the governor, the charter becomes the organic law of such city effectively, a local constitution.") (internal quotation marks omitted).

### 1.2 Statutory Provisions

Two provisions in Arizona's statutes expand on and complement the state's constitutional grant of authority to charter cities.

Under [section 9-284](#), "[w]hen the charter has been framed, adopted and approved, and any of its provisions are in conflict with any law relating to cities . . . , the provisions of the charter shall prevail notwithstanding the conflict, and shall operate as a repeal or suspension of the law to the extent of conflict . . ." The same section clarifies that a city charter "shall be consistent with and subject to the state constitution, and not in conflict with the constitution and laws relating to the exercise of the initiative and referendum and other general laws of the state not relating to cities." *Id.* In a recent opinion, the Arizona Attorney General summarized case law interpreting the interplay of [section 9-284](#) and the Arizona Constitution, concluding that this section "has been interpreted to allow charter cities . . . autonomy in areas solely their concern, while ensuring that matters of statewide concern are governed by state law."<sup>20</sup> Moreover, "[a]n unbroken chain of cases has continued to apply this dichotomy."<sup>21</sup> The case law section of this chapter identifies cases that discuss the distinction between matters of state and local concern.

## 2. HOME RULE CHARTERS

Of Arizona's ninety-one cities, nineteen are charter cities with charters adopted pursuant to the Arizona Constitution.<sup>22</sup> One, the City of Tombstone, adopted a charter prior to statehood. Arizona's charter cities include

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<sup>20</sup> Ariz. Op. Atty. Gen. No. I24-006 (Mar. 25, 2024), <https://perma.cc/S54U-VVA6>.

<sup>21</sup> *Id.*

<sup>22</sup> *Arizona City & Town Data*, LEAGUE OF ARIZONA CITIES AND TOWNS, <https://perma.cc/BK63-MNBV>.

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all of the state’s five largest cities: [Phoenix](#), [Tucson](#), [Mesa](#), [Chandler](#), and [Glendale](#). Cities in the state that do not have charters operate as general law cities, which derive their authority to act directly from state law and not a locally adopted charter.<sup>23</sup>

### 3. PREEMPTION OF LOCAL LAW

Arizona courts generally find preemption wherever the state has expressly indicated its intent to eliminate local authority. However, limited categories of local actions—those “relat[ing] to purely municipal affairs”—are immune to state preemption.

#### 3.1 Express Preemption

Express preemption occurs when the state includes explicit preemptive language in a state statute. For example, [Ariz. Rev. Stat. § 9-500.42](#) expressly preempts local governments from regulating blockchain technology: “A city or town may not prohibit or otherwise restrict an individual from running a node on blockchain technology in a residence.” Courts emphasize that the “legislative intent to preempt must be clear; a negative inference is insufficient.” [City of Tucson v. Consumers For Retail Choice Sponsored by Wal-Mart](#), 5 P.3d 934, 937 (Ariz. Ct. App. 2000).

#### 3.2 Field Preemption

Field preemption occurs when a state statute expressly or impliedly occupies an entire legislative field, leaving no room for local regulation. To find that a state law has occupied the whole field in a certain area, courts consistently indicate that “[t]he existence of a preempting policy must be clear,” that “the assertedly competing provisions in question must be actually conflicting, rather than capable of peaceful coexistence,” and that “commonality of some aspect of subject matter is insufficient.” [Jett v. City of Tucson](#), 882 P.2d 426, 432 (Ariz. 1994). While courts continue to recognize the possibility of field preemption—and have historically been willing to conclude that was the legislature’s intent—decisions from the past several decades reflect significant reluctance to conclude that the legislature intended to preempt a whole field of regulation.<sup>24</sup>

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<sup>23</sup> LOCAL SOLUTIONS SUPPORT CENTER, [SUMMARY OF HOME RULE IN] ARIZONA (May 2020), <https://perma.cc/SE7F-9JSS> (outlining the types and powers of Arizona municipalities).

<sup>24</sup> Compare [City of Prescott v. Randall](#), 196 P.2d 477, 478 (Ariz. 1948) (finding local limit on number of liquor licenses preempted by state liquor regulation that “fully covered” the subject) and [Keller v. State](#), 47 P.2d 442, 447 (Ariz. 1935) (deeming local reckless driving law “invalid because the Legislature has completely covered that subject”) with [Babe’s Cabaret v. City of Scottsdale](#), 3 P.3d 1018, 1022 (Ariz. Ct. App. 1999), amended (Feb. 18, 2000) (“[S]tatewide control over intoxicating liquors does not mean that municipalities are forbidden to enact any law having a collateral effect on businesses [subject to state liquor law.]”) and [Jett v. City of Tucson](#), 882 P.2d 426, 432 (Ariz. 1994) (finding no field preemption where state law and local law “touch upon a common subject” but the state law does not address the particular topic of a challenged local law).

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### 3.3 Conflict Preemption

Conflict preemption occurs when there is outright or actual conflict between state and local law. As with field preemption, to make such a finding, courts ask whether “the assertedly competing provisions in question [are] actually conflicting, rather than capable of peaceful coexistence . . . [and m]ere commonality of some aspect of subject matter is insufficient.” [City of Prescott v. Town of Chino Valley](#), 790 P.2d 263, 271 (Ariz. Ct. App. 1989), *vacated in part on other grounds*, 803 P.2d 891 (Ariz. 1990).

In Arizona, a charter city’s law can supersede state law if the city law is within an area of solely local concern. See [Strode v. Sullivan](#), 236 P.2d 48, 51 (Ariz. 1951) (“[A] city charter . . . supersede[s] all laws of the state in conflict with such charter provisions insofar as such laws relate to purely municipal affairs.”). But the only matters that courts have clearly held are solely local concerns are a “city’s manner and method of disposing of its real estate” and the “method and manner of conducting elections in the city.” [State ex rel. Brnovich v. City of Tucson](#), 484 P.3d 624, 628–29 (Ariz. 2021). And where the subject of a city law touches on both local concerns and ones of statewide interest, state law prevails. See [City of Tucson v. Consumers For Retail Choice Sponsored by Wal-Mart](#), 5 P.3d 934, 936 (Ariz. Ct. App. 2000) (“[I]n matters of both local and statewide concern, a charter city’s ordinance is invalid if it conflicts with a valid state statute.”). Thus, a local government has limited protection from preemption under the test for matters of local concern.

### 3.4 State Laws with Potential for Local Climate Preemption

In recent years, the Arizona legislature has adopted a wide variety of laws preempting local control over issues connected to climate change. Those include, as examples:

**Building Electrification.** [Ariz. Rev. Stat. § 9-467\(C\)](#): “A municipality requiring the issuance of a building permit may not deny a permit application based on the utility provider proposed to provide utility service to the project.”

**Building Electrification.** [Ariz. Rev. Stat. § 9-810\(B\)](#): “Any code . . . adopted by a municipality may not prohibit or have the effect of restricting a person’s or entity’s ability to use the services of a utility provider that is capable and authorized to provide utility service at a person’s or entity’s property.”

**Building Electrification:** [Ariz. Rev. Stat. § 11-321\(C\)](#): “A county may not deny a permit application based on the utility provider proposed to provide utility service to the project.”

**Building Electrification.** [Ariz. Rev. Stat. § 11-867](#): “Any code . . . adopted by a county may not prohibit or have the effect of restricting a person’s or entity’s ability to use the services of a utility provider that is capable and authorized to provide utility service at a person’s or entity’s property.”

**Appliance Emission Standards.** [Ariz. Rev. Stat. § 9-810.01](#): “Any code, ordinance or general or specific plan provision or part of a code, ordinance or general or specific plan provision adopted by a municipality may not

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prohibit the use of refrigerants that are listed as acceptable pursuant to the clean air act (69 Stat. 322; 42 United States Code § 7671k) if the equipment used is listed and installed in accordance with the use conditions prescribed in the clean air act.”

**Energy Use Benchmarking.** [Ariz. Rev. Stat. § 9-500.36\(A\)](#): “A city or town may not require an owner, operator or tenant of a business, commercial building or multifamily housing property to measure and report energy usage and consumption, including energy consumption benchmarking and building facility energy efficiency audits.”

**Energy Use Benchmarking.** [Ariz. Rev. Stat. § 11-269.14\(A\)](#): “A county may not require an owner, operator or tenant of a business, commercial building or multifamily housing property to measure and report energy usage and consumption, including energy consumption benchmarking and building facility energy efficiency audits.”

**Local Climate Adaptation.** [Ariz. Rev. Stat. § 49-371\(B\)](#): “A city, town or county may not regulate under this [local stormwater management-related] section any activity that does not discharge to a protected surface water.”

**Plastic Containers.** [Ariz. Rev. Stat. § 9-500.38](#): “A city or town may not . . . [r]egulate . . . reusable bags, disposable bags, boxes, beverage cans, bottles, cups and containers that are made out of cloth, plastic, extruded polystyrene, glass, aluminum, cardboard or other similar materials and that are used for transporting merchandise or food to or from a business or multifamily housing property.”

**Plastic Containers.** [Ariz. Rev. Stat. § 11-269.16](#): “A county may not . . . [r]egulate . . . reusable bags, disposable bags, boxes, beverage cans, bottles, cups and containers that are made out of cloth, plastic, extruded polystyrene, glass, aluminum, cardboard or other similar materials and that are used for transporting merchandise or food to or from a business or multifamily housing property.”

**Regulatory Burdens Generally.** [Ariz. Rev. Stat. Ann. § 9-841\(A\)](#): “Unless authorized by federal, state or local law a city or town may not take any action that materially increases the regulatory burdens on a business unless there is a threat to the health, safety and welfare of the public that has not been addressed by legislation or industry regulation within the proposed regulated field.”

**Penalties for Enacting Local Laws in Conflict with State Law.** Under [Ariz. Rev. Stat. § 41-194.01](#) the state can withhold state shared revenue from a city that enacts and does not immediately repeal a local law in conflict with state law. Under the same section, the state’s attorney general can issue a finding that a local law *may* be in conflict with state law, triggering an Arizona Supreme Court review of the local law during which the city must post a bond equal to six months of its state shared revenue. *Id.*

## 4. CASE LAW ON HOME RULE AND PREEMPTION OF LOCAL LAW

Arizona courts recognize “local autonomy to exercise charter-granted authority over purely municipal concerns while preserving final state legislative authority over matters of joint municipal and statewide concern.” [State ex](#)

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[\*rel. Brnovich v. City of Tucson\*](#), 484 P.3d 624, 627 (Ariz. 2021). The cases below demonstrate how Arizona courts have viewed municipal authority and the state’s power to preempt local ordinances.

- [\*State ex rel. Brnovich v. City of Tucson\*](#), 484 P.3d 624, 627 (Ariz. 2021): In *Brnovich*, the Supreme Court of Arizona considered an alleged conflict between a city’s charter provision requiring local elections to be held on specific dates and a state law requiring cities to consolidate state and local elections onto a different date. *Id.* at 625. For the narrow question considered here—whether “to hold municipal elections on cycle or off cycle is a matter of purely municipal concern”—the court concluded that if “a city’s charter authorizes the city to make that determination, state law cannot preempt the resulting decision.” *Id.* at 653. But the court emphasized that identifying matters of purely local concern is “often challenging” and that such matters “are few in number.” *Id.*
- [\*City of Prescott v. Town of Chino Valley\*](#), 790 P.2d 263 (Ariz. Ct. App. 1989), *aff’d in part and vacated in part*, 803 P.2d 891 (Ariz. 1990): Arizona courts are reluctant to make a finding of field preemption if a state law leaves any topic unaddressed, even in an otherwise comprehensive statute. For example, the court considered a case involving an ordinance affecting a water pipeline owned by the City of Prescott but located within Town of Chino Valley. *Id.* at 271. Chino Valley passed an ordinance imposing a tax on any pipelines operating within the town, which applied to Prescott’s pipeline. *Id.* at 611–12. Prescott argued that the state’s Groundwater Management Act fully occupied the field of groundwater extraction and transport, leaving no space for Chino Valley’s tax. *Id.* at 616. The Court, despite “agree[ing] with Prescott that the Groundwater Management Act is markedly comprehensive legislation,” noted that the state could have chosen to expressly prohibit taxes like Chino Valley’s and declined to do so. *Id.* As a result, the court allowed the tax to stand, concluding that “a tax like the present one was not out of the realm of the foreseeable, and if the legislature had been of a mind to preclude any such tax, we believe it would have done so in appropriate terms.” *Id.*
- [\*Jett v. City of Tucson\*](#), 882 P.2d 426 (Ariz. 1994): In *Jett* the court considered whether a state constitutional provision occupied the field of regulating municipal judges. *Id.* at 432–33 (Ariz. 1994). The state’s constitution allowed a statewide Commission on Judicial Conduct to remove a judge for misconduct; the city’s charter provided simply that judges could only be removed through a two-thirds vote of the city council. *Id.* at 429–30; *see also* [Ariz. Const. art. 6.1, § 4](#). After deciding the two provisions do not actually conflict, the court further concluded that because the legislature had only selected certain facets of judicial conduct to regulate, it had not evinced a clear intent to occupy this whole area of law. *Id.* at 433 (“[W]e will not infer from the fact that the Legislature has addressed some areas concerning the employment of magistrates, while remaining silent on others, an intent to preempt cities from authorizing in their city charters the removal of their magistrates from office.”).

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## 4.1 Other Relevant Cases

*Union Transportes de Noqales v. City of Noqales*, 985 P.2d 1025, 1030 (Ariz. 1999) (“Preemption becomes an issue when the charter city legislates in contradiction to state law or over a subject that is in a ‘field’ already fully occupied by state law.”).

*Strode v. Sullivan*, 236 P.2d 48, 51 (Ariz. 1951) (“[T]his court has uniformly held that a city charter, when regularly adopted and approved, becomes the organic law of the city and the provisions of the charter supersede all laws of the state in conflict with such charter provisions insofar as such laws relate to purely municipal affairs.”).

*Tucson v. Consumers for Retail Choice*, 5 P.3d 934, 937 (Ariz. Ct. App. 2000) (“Even if a city ordinance on a matter of local and statewide concern does not conflict with a state statute, however, it may nevertheless be invalid if the state has appropriated the field.”).

## 5. BUILDING CODES

Arizona has not adopted state-wide building or energy conservation codes. Local governments in the state adopt their own building codes. [Ariz. Rev. Stat. § 11-861](#). The overall scope of municipal authority to adopt building codes is not described in state law, but Arizona courts have generally construed that authority broadly. *See, e.g., Washburn v. Pima County*, 81 P.3d 1030, 1038 (Ariz. Ct. App. 2003) (“[B]uilding codes that affect the exercise of homeowners’ ‘personal, private, and aesthetic choices’ are a proper exercise of [municipal] police power.”). The City of Phoenix, for example, has incorporated by reference many of the 2018 versions of International Code Council (ICC) model codes with local amendments—including the International Energy Conservation Code (IECC) and International Existing Building Code (IEBC).<sup>25</sup> *See* [Phoenix, Arizona Ordinance G-6463](#) (June 6, 2018).

State law does place several narrow limits on what local governments can regulate through their building codes. Most significantly, local governments cannot enforce rules that block access to particular types of utility service—they cannot ban new construction from using gas or require all-electric buildings, for example. *See* [Ariz. Rev. Stat. § 11-867](#) (so-called “ban on [gas] bans” applicable to counties); [§ 9-810](#) (same applicable to cities and towns).

## 6. ELECTRIC UTILITY CONSIDERATIONS

State law allows Arizona to govern public utilities through the Arizona Corporation Commission but leaves municipalities free to manage their municipally-owned utilities free from the Commission’s oversight. Further, local governments enjoy significant authority to regulate how public utilities use municipal property.

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<sup>25</sup> The City of Phoenix’s local amendments are available at: <https://perma.cc/V3P5-XP8>.

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**What is the relevant utility regulatory body in the state? Who and what does it regulate?** The [Arizona Corporation Commission](#) is a constitutionally-formed body with jurisdiction to prescribe rates and conditions of service for all public utilities within the state. [Ariz. Const. art. XV, § 3](#) (“The corporation commission shall have full power to, and shall, prescribe just and reasonable classifications to be used and just and reasonable rates and charges to be made and collected, by public service corporations within the state for service rendered therein, and make reasonable rules, regulations, and orders, by which such corporations shall be governed in the transaction of business within the state . . .”).

**What authority, if any, do municipalities have over utilities?** Local governments have very little authority over investor-owned utilities that are regulated by the Arizona Corporation Commission: they are largely limited to what control they may affect through franchise agreements. In contrast, municipalities are broadly empowered to operate and regulate their own utilities, and any such utilities are not subject to the Arizona Corporation Commission’s jurisdiction. See [Ariz. Rev. Stat. § 9-511](#); [Ariz. Const. art. XV, § 2](#).

. Local governments can exercise more control over their streets. Under [Ariz. Rev. Stat. § 40-283\(A\)](#), any utility’s use of public rights of way is “subject to control and regulation by the municipal authorities.” Further, the local government, “in granting a license or franchise, or at any time after it is granted, may impose restrictions and limitations upon the use of the public roads as it deems best for the public safety or welfare.” *Id.* at [§ 40-283\(B\)](#).

**Can cities enter into franchise agreements with utilities?** Municipalities are authorized to enter into franchise agreements for public utility service. See [Ariz. Rev. Stat. § 9-501](#). Franchise agreements cannot be for a term of longer than twenty-five years. [Ariz. Const. art. XIII, § 4](#) (“No municipal corporation shall ever grant, extend, or renew a franchise . . . for a longer time than twenty-five years.”).

**Does case law address whether the state public service law preempts local authority over utilities?** The Supreme Court of Arizona has directly addressed the scope of the Arizona Corporation Commission’s preemption of local measures. In [Arizona Pub. Serv. Comm’n v. Town of Paradise Valley](#), a court considered whether an ordinance requiring power lines to be buried underground was valid in the face of the Corporation Commission’s seemingly pervasive power over public utilities. 610 P.2d 449, 451 (1980). The court, collecting and analyzing its cases on the topic, concluded that “the Corporation Commission’s paramount power is limited to rates, charges or classifications and that, as to all other matters, the legislature has the power to take what action it deems appropriate.” *Id.* at 451. Accordingly, statutes that expressly gave local governments zoning authority over utility poles and power lines were valid and not preempted by the Corporation Commission’s enabling provisions.

**How can cities intervene in Arizona Corporation Commission proceedings?** Arizona Corporation Commission rules allow any person “directly and substantially affected by the proceedings” to intervene in Commission cases. [14 Ariz. Admin. Code R14-3-105\(A\)](#). Doing so requires the intervenor to apply for leave to intervene and be granted permission before a hearing, and the commission may deny an application where doing so would cause “the issues theretofore presented [to be] unduly broadened.” *Id.* at [R14-3-15\(B\)](#).

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**Does the state have an obligation to serve statute?** Yes, public utilities in Arizona are subject to a duty to serve all customers: “Every public service corporation shall furnish and maintain such service, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient and reasonable.” [Ariz. Rev. Stat. § 40-361\(B\)](#).

**Has the state passed enabling legislation for community choice aggregation (CCA)?** No, Arizona has not passed enabling legislation for community choice aggregation.

## 7. SECONDARY SOURCES

LEAGUE OF ARIZONA CITIES AND TOWNS, CHARTER GOVERNMENT PROVISIONS IN ARIZONA CITIES (May 2015), <https://perma.cc/3CCZ-VJRT> (providing additional background on the forms of government adopted in Arizona cities’ charters).

NATIONAL ASSOCIATION OF COUNTIES, ARIZONA COUNTY GOVERNMENT OVERVIEW (2022), <https://perma.cc/T8FU-SNLT> (providing demographic and legal background information specific to counties in Arizona).

## 8. MISCELLANEOUS

In 2023 Arizona lawmakers introduced a bill aimed at removing cities’ option to establish a home rule charter altogether. The measure, [SCR 1023](#) of 2023, would have repealed Article 13, section 2, of the Arizona constitution. The measure was narrowly rejected by senators indicating that they would have supported a slightly narrowed version of the same legislation.<sup>26</sup> If the measure passed (or if a future version does), it would be subject to ratification by voters in the next general election.

In early 2024 the Arizona Corporation Commission voted to draft “anti-ESG” rules that would repeal existing renewable energy mandates and energy efficiency programs for public utilities.<sup>27</sup> As of December 2025 the rules appear not to have been drafted.

While not a statute precluding local action per se, [Ariz. Rev. Stat. § 49-191](#) expressly forbids state agencies from creating or operating “a state or regional program to regulate the emission of greenhouse gas for the purposes of addressing changes in atmospheric temperature without express legislative authorization.”

Under [Ariz. Const. art. IV, § 1\(8\)](#), voters in an Arizona city may call for referenda on legislation enacted within the city: “Under the power of the initiative fifteen percent of the qualified electors may propose measures on

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<sup>26</sup> Howard Fischer, *Amendment to end home rule in Arizona cities defeated*, DAILY INDEPENDENT (Feb. 28, 2023), <https://perma.cc/JP42-98HG> (“[A senator in opposition] said his mind — and his vote — could be changed if smaller cities like Casa Grande got to keep their charters.”).

<sup>27</sup> Arizona Corporation Commission, Open Meeting of the Arizona Corporation Commission, Meeting Agenda (Feb. 6, 2024), [https://azcc.granicus.com/player/clip/5897?view\\_id=3&redirect=true](https://azcc.granicus.com/player/clip/5897?view_id=3&redirect=true); see also Corinne Murdock, *Arizona Corporation Commission Moves to Limit ESG Push by Energy Companies*, AZ FREE NEWS (Feb. 9, 2024), <https://perma.cc/P3ES-UNTD>.

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such local, city, town or county matters, and ten percent of the electors may propose the referendum on legislation enacted within and by such city, town or county.”