

# NAVIGATING STATE LAW IN LOCAL CLIMATE ACTION ALABAMA



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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 Alabama. 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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ALABAMA

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

Alabama is a limited home rule state—legislative power is concentrated in the state legislature, but cities have been delegated authority to govern their own affairs. Local governments in Alabama possess only the powers expressly granted to them by the state or that are incidental to such expressly conferred powers, as well as those powers “indispensably necessary to the accomplishment of the objects of the municipality.” [Phenix City v. Putnam](#), 109 So. 2d 836, 838 (Ala. 1959). Cities, having been statutorily granted a version of the police power, have the most autonomy of any category of Alabama local government. Still, the legislature does not have the power to permit cities to pass laws inconsistent with the general laws of the state. [Ala. Const. art. IV, § 89](#).

### 1.1 Constitutional Provisions

Alabama’s constitution does not directly delegate home rule authority and police power to local governments, leaving the scope of municipal authority to the Alabama legislature. Article XII, sections 220–28 and other provisions of the state constitution address the limits of municipal authority. See, e.g., [Ala. Const. art. XI, § 216](#) (limiting property tax power); [Ala. Const. art. IV, § 94](#) (limiting grant and lending power to private persons or corporations). The Alabama Constitution additionally prohibits the legislature from authorizing cities “to pass any laws inconsistent with the general laws of [Alabama].” [Ala. Const. art. IV, § 89](#).

In 2015, Alabama’s constitution was amended to provide additional powers to counties. See [Ala. Const. Act 2015-220](#).

### 1.2 Statutory Provisions

Under the limited police power granted them by the Alabama legislature, cities may, “from time to time,” adopt ordinances and resolutions pursuant to powers expressly delegated by the state and may also “provide for the safety, preserve the health, and promote the prosperity, and improve the morals, order, comfort, and convenience of the inhabitants” of the city, so long as the local legislation is not inconsistent with state law. [Ala. Code § 11-45-1](#).

Although municipalities exercise “such power . . . as is conferred upon [them] by law,’ a municipality need not predicate its every action upon some specific express grant of power. Alabama’s cities possess certain implied powers that derive from the nature of the powers expressly granted to them by the legislature.” [Wilkins v. Dan Haqqerty & Assocs.](#), 672 So. 2d 507, 509 (Ala. 1995). In other words, cities can exercise powers that are necessarily implied from an express grant of power. *Id.* There are some limits to cities exercising their power, however. For example, the Court of Civil Appeals has stated that “[l]ocal legislation reflecting responses to local needs may not be enacted when those local needs have already been responded to by general legislation.” [Danny’s, Inc. v. City of Muscle Shoals](#), 620 So. 2d 8 (Ala. Civ. App. 1992).

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## 2. HOME RULE CHARTERS

Alabama has 464 incorporated municipalities; four of those have a population greater than 100,000. Under state law, “cities” are defined as jurisdictions with a population of 2,000 or greater. [Ala. Code. § 11-40-6](#). Cities are then further categorized into “classifications” based on population as certified by the 1970 federal decennial census. For example, all cities with 300,000 or more inhabitants are “Class 1” cities. [Ala. Code. § 11-40-12](#). Currently, Birmingham is the state’s only Class 1 city. Cities incorporated after June 28, 1979 are classified based on their population at the time of its incorporation. *Id.* § 11-40-12(c). The Alabama Legislature may not amend the charter of a municipality, but it may change or alter their boundaries through legislative acts [Ala. Const. art. IV, § 104\(18\)](#).

## 3. PREEMPTION OF LOCAL LAW

Alabama courts recognize three circumstances where municipal ordinances are preempted by state law: when (1) a state law expressly defines the extent to which it preempts municipal ordinances; (2) a city attempts to regulate conduct in a field that state law exclusively occupies; or (3) a municipal ordinance is inconsistent with state law. See [Ex parte Tulley](#), 199 So. 3d 812, 821 (Ala. 2015).

### 3.1 Express Preemption

Express preemption occurs when the state legislature includes explicit preemptive language in state law. In Alabama, express preemption occurs when “[a] state statute . . . expressly defines the extent to which its enactment preempts municipal ordinances.” [City of Gulf Shores v. Coyote Beach Sports, LLC](#), 2024 WL 1592183 at \*1 (Ala. 2024). For example, Alabama has expressly preempted lower levels of government from regulating labor peace agreements:

A county, municipality, or any other political subdivision of this state shall not enact or administer any ordinance, rule, policy, or other mandate that creates requirements, regulations, or processes relating to labor peace agreements or similar agreements. Any ordinance, policy, rule, or other mandate of a county, municipality, or any other political subdivision of this state that is inconsistent with this section is void.

[Ala. Code § 25-7-42\(a\)](#).

### 3.2 Field Preemption

Field preemption occurs when state statutes occupy an entire legislative field, leaving no room for local regulation. In Alabama, an ordinance may be field preempted “when [it] attempts to regulate conduct in a field that the [state] legislature intended the state law to exclusively occupy.” [City of Gulf Shores](#), 2024 WL 1592183 at \*1. For the state to preempt an entire field from regulation, “there must be some clear expression of

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legislative intent . . . or a statement of the legislature’s desire to have uniform regulations statewide.” *Peak v. City of Tuscaloosa*, 73 So. 3d 5, 19–20 (Ala. Crim. App. 2011). For example, Alabama has expressly preempted the field of firearm regulation:

(a) The purpose of this section is to establish within the Legislature complete control over regulation and policy pertaining to firearms, ammunition, and firearm accessories in order to ensure that such regulation and policy is applied uniformly throughout this state to each person subject to the state’s jurisdiction and to ensure protection of the right to keep and bear arms recognized by the Constitutions of the State of Alabama and the United States. This section is to be liberally construed to accomplish its purpose . . . (c) Except as otherwise provided in [this Act] or as expressly authorized by a statute of this state, the Legislature hereby *occupies and preempts the entire field of regulation* in this state touching in any way upon firearms, ammunition, and firearm accessories to the complete exclusion of any order, ordinance, or rule promulgated or enforced by any political subdivision of this state.

[Ala. Code § 13A-11-61](#) (emphasis added).

### 3.3 Conflict Preemption

In Alabama, conflict preemption occurs when a municipal ordinance “permits what a state statute forbids or forbids what a state statute permits.” *City of Gulf Shores*, 2024 WL 1592183, at \*1. For example, in *Glass v. City of Montgomery*, the Alabama Supreme Court held that a local ordinance automating photographic enforcement of traffic-violations did not conflict with the Alabama motor-vehicle and traffic code by requiring more restrictions than the state laws. 360 So. 3d 1021 (Ala. 2021).

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

**Building Electrification.** [Ala. Code § 37-18-2](#): “Except as otherwise provided in this chapter, no governmental entity may adopt an ordinance, resolution, regulation, or policy that prohibits, or has the effect of restricting, a person’s or entity’s ability to use a utility service of a provider that is authorized to do business in this state.”

**Appliance Electrification.** [Ala. Code § 9-17-125](#): “This article shall preempt any local law or any ordinance or authority of any local governing body to regulate [liquid petroleum gas room heaters] and no local law or ordinance or authority of any local governing body shall supersede this article.”

**Government Contracts.** [Ala. Code § 41-16-160 et seq.](#): This section of law prohibits governmental entities from entering contracts worth more than \$15,000 with certain companies engaged in “economic boycotts.” *Id.* [§ 41-16-161](#). Economic boycotts are defined as “refusing to deal with, terminating business activities with, or otherwise taking any commercial action that is intended to penalize or inflict economic harm on a company solely because the company, without violating controlling law or regulation . . . [e]ngages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy, timber, mining or

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agriculture[,]” or “does not meet, is not expected to meet, or does not commit to meet environmental standards or disclosure criteria, in particular to eliminate, reduce, offset, or disclose greenhouse gas emissions[,]” among other non-climate related areas. *Id.* [§ 41-16-160](#).

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

In determining whether a local ordinance is preempted by state law, Alabama courts consider whether a state statute expressly “defines the extent to which its enactment preempts municipal ordinances,” a municipal ordinance attempts to regulate in a field that the state legislature “intended the state law to exclusive occupy,” or a municipal ordinance “permits what a state statute forbids or forbids what a state statute permits.” [Ex Parte Tulley](#), 199 So. 3d at 812, 821. The limited power of cities to enact ordinances is tempered to some extent by a judicial trend to apply deference to the validity of municipal legislative actions. *Peak v. City of Tuscaloosa*, 73 So. 3d 5, 11 (Ala. Crim. App. 2011) (“[M]unicipal ordinances are presumed to be valid and reasonable, to be within the scope of the powers granted municipalities to adopt such ordinances, and are not to be struck down unless they are clearly arbitrary and unreasonable.”) (cleaned up).

The cases below demonstrate how Alabama courts have viewed municipal authority and the state’s power to preempt local ordinances.

- [Ex parte Tulley](#), 199 So. 3d 812 (Ala. 2015): The defendant (Tulley) was convicted in a trial court of carrying a pistol outside his own premises in violation of a Jacksonville city ordinance. *Id.* at 814. That ordinance incorporated by reference a state statute’s misdemeanors, offenses, and violations, made them municipal misdemeanors, offenses, and violations when those acts occur within the city’s jurisdiction, and imposed a punishment different than the state statute. *Id.* at 815. The Supreme Court of Alabama granted review to determine whether the city ordinance that Tulley was charged under violated his due process rights. While ultimately declaring the state statute unconstitutional on other grounds and reversing Tulley’s conviction, the court also explained that if the state has not preempted a field, “the same acts may be prohibited by the state and a municipality and the penalties may be different so long as the penalty provided ‘is not in excess of that which the municipality has been granted the authority to impose.’” *Id.* at 821. Additionally, the court acknowledged that “mere differences in detail” between a local ordinance and a state statute do not create a conflict, nor does a local act related to a matter that state law is silent on. *Id.*
- [City of Center Point v. Atlas Rental Prop., LLC](#), 371 So. 3d 856 (Ala. 2022): In 2019, the City of Center Point passed Ordinance No. 2019-11 (COA Ordinance) that required, among other things, landlords to obtain a certificate of occupancy before allowing a new tenant to take possession of a rental-housing unit. Plaintiffs, two rental-property management companies, filed suit seeking injunctive relief against Center Point, arguing that 2019-11 was preempted by the Alabama Uniform Residential Landlord and Tenant Act (AURLTA). The Alabama Supreme Court upheld the trial court’s preliminary injunction, holding that the COA Ordinance was expressly preempted because the state clearly intended to regulate the landlord-tenant

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relationship in Alabama to the exclusion of counties and cities based on the AURLTA’s language. Specifically, the Court stated that section 35-9A-131 of AURLTA expressly prohibits ordinances “relative to residential landlords, rental housing codes, or the rights and obligations governing residential landlord and tenant relationships.” *Center Point*, 371 So. 3d at 860. The Court reasoned that the COA Ordinance related to residential landlords and the obligations of their relationship to tenants—and was therefore preempted—by restricting the association and contract formation between landlords and tenants “unless and until the landlord acquire[d] a certificate of occupancy.”

#### 4.1 Other Relevant Case

[Lewis v. Bentley](#), 2017 WL 432464 (N.D. Ala. Feb. 1, 2017) (upholding an Alabama state law that prohibits local governments from enacting their own minimum wage ordinances).

[Peak v. City of Tuscaloosa](#), 73 So. 3d 5 (Ala. Crim. App. 2011) (concluding that city ordinance requiring registration of septic tanks was valid because the city was engaging in a governmental function within its statutory police powers).

#### 4.2 Recent and Ongoing Legal Activity

In September 2024, the City of Montgomery passed an ordinance requiring carriers of a concealed firearm in a vehicle or on one’s person within the city’s jurisdiction to also carry photo identification.<sup>20</sup> Failing to provide a photo identification when requested was to result in confiscation of the firearm. On September 9, 2024, the state’s Attorney General sent a letter to Montgomery’s city council, stating the gun control ordinance is preempted by state law and must be repealed.<sup>21</sup> In January 2025, the Montgomery City Council, by a vote of 5-4, repealed the ordinance.<sup>22</sup>

## 5. BUILDING CODES

Alabama has adopted a statewide building code, as well as codes for mechanical, electrical, and plumbing systems, that sets the minimum building standards for state-owned properties, movie theaters, schools, and hotels. [Ala. Admin. Code § 355-12-1-.01](#); [Ala. Admin. Code § 355-12-1-.04](#). The Division of Construction Management, the state agency that enforces the code, does not have jurisdiction over residential or commercial property.

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<sup>20</sup> Safiyah Riddle, *Mayor of Alabama’s Capital Becomes Latest to Try to Limit GOP ‘Permitless Carry’ Law*, AP NEWS (Sept. 6, 2024), <https://perma.cc/L4JK-XEMV>.

<sup>21</sup> Monae Stevens, *Montgomery’s Gun ID Ordinance Sparks Concerns Over Legality*, WSFA 12 (Oct. 15, 2024), <https://perma.cc/7K9H-9FL8>.

<sup>22</sup> Simon Schuessler, *Montgomery Gun ID Ordinance Repealed; New Ordinance in the Works*, WSFA 12 (Jan. 7, 2025), <https://perma.cc/K3E8-SLVY>.

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The adopted statewide code reflects the 2021 edition of the International Building Code (IBC), published by the International Code Council (ICC). *Id.* Alabama does not have a mandatory statewide building code for residential and commercial properties (excluding the building types listed above). Local jurisdictions have the express authority to adopt codes for residential and most commercial property, excluding “private schoolhouses, hotels, public and private hospitals, and moving picture houses.” [Ala. Code § 41-9-166](#). Pursuant to this authority, Birmingham has adopted most of the 2021 code editions published by the ICC,<sup>23</sup> while Montgomery has adopted the 2018 Edition of the IBC.<sup>24</sup> Additionally, the state fire marshal “may adopt residential construction and building codes relating to fire prevention and protection applicable statewide that supersede the municipal and county codes to the extent they are inconsistent with the code adopted by the state fire marshal.” [Ridnour v. Brownlow Homebuilders, Inc.](#), 100 So. 3d 554, 560 (Ala. Civ. App. 2012). Alabama has adopted an amended version of the 2021 International Fire Code.

## 6. ELECTRIC UTILITY CONSIDERATIONS

**What is the relevant utility regulatory body in the state? Who and what does it regulate?** The Alabama Public Service Commission (PSC) regulates private, investor-owned utilities. See Ala. Code §§ [37-1-13](#), [37-4-1\(5\)](#), [\(7\)](#). “Title 37 confers two types of jurisdiction on the PSC. First, the PSC has regulatory jurisdiction to set rates for utility service, to establish service regulations for utility providers, and to regulate utility equipment . . . Second, the PSC has adjudicatory jurisdiction over certain disputes involving utilities, including claims ‘made against any utility . . . by any body politic or municipal organization’ to determine whether ‘any . . . service regulation . . . is in any respect unfair, unreasonable, unjust or inadequate.’” [City of Wetumpka v. Alabama Power Co.](#), 297 So. 3d 367, 370 (Ala. 2019); see also [Ala. Code § 37-1-83](#). The PSC does not have regulatory jurisdiction over municipal electric utilities, which are not-for-profit utilities run by a city. [Ala. Code § 37-1-34](#). It also does not regulate wholesale power generators or the Tennessee Valley Authority (TVA).<sup>25</sup> See Ala. Code §§ [37-1-33](#); [37-1-43](#). TVA provides electricity service to northern Alabama.<sup>26</sup>

**What authority, if any, do municipalities have over utilities?** Adhering to the state’s limited home rule regime, municipalities’ “only power to regulate utilities is the power granted to [them] by the Constitution or by state legislation.” [Alabama Power Co. v. State](#), 527 So. 2d 678, 683 (Ala. 1988). A recent statute, while implementing constitutional municipal veto authority of utility operation, significantly restricts municipal authority over electric suppliers with assigned service territories. [Ala. Code § 11-49-1](#). For electric and gas utilities meeting certain criteria, municipalities cannot impose separate fees beyond statutorily established taxes. *Id.* § [11-49-1\(b\)](#). The statute preserves existing franchise agreements but limits future increases in franchise fees for gas utilities unless approved by voters. *Id.* [§ 11-49-1\(c\)–\(d\)](#).

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<sup>23</sup> City of Birmingham, Technical Code (2024), <https://www.birminghamal.gov/work/building-codes>.

<sup>24</sup> Montgomery, Ala., Code of Ordinances § 5-71 (2024).

<sup>25</sup> See *Electricity Policy Division*, ALA. PUB. SERV. COMM’N, <https://perma.cc/C25K-YBQK>.

<sup>26</sup> *Local Power Companies*, TENN. VALLEY AUTH., <https://www.tva.com/energy/public-power-partnerships/local-power-companies>; *Power Service Area 2018*, TENN. VALLEY AUTH., <https://perma.cc/6V8V-Z8AJ>.

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Although the state legislature has delegated authority over investor-owned utilities to the PSC, municipal electric utilities are not mandated to purchase power from a particular investor-owned utility. For example, while Huntsville, Alabama buys its electricity from the TVA and then distributes it,<sup>27</sup> other cities have joined together to form joint action agencies to purchase electricity from several generating companies and also generate their own electricity.<sup>28</sup> Additionally, as noted below, municipalities retain jurisdiction over their streets, other highways, and public places, giving cities power over whether, how, and where electric utilities can site utility-related infrastructure like transmission lines, substations, and transformers.

Section 220 of the Alabama Constitution gives cities the authority to consent or withhold consent to operation of a utility on their “streets, avenues, alleys, or public places.” [Ala. Const. art. XII, § 220](#). Further, under Alabama Code, the PSC’s jurisdiction shall not be construed “(1) [t]o limit or restrict the police jurisdiction or power of municipalities over their streets and other highways and public places or the power to maintain or the power to require maintenance of the same; (2) [t]o limit or restrict any right or power, by contract or otherwise, of any municipality to require utilities to pave and maintain the portions of highways used and occupied by them[.]” [Ala Code § 37-1-35](#).

**Can cities enter into franchise agreements with utilities?** Cities can enter into franchise agreements with proper statutory authorization but are currently limited in their power to grant franchise agreements. Section 220 of the Alabama Constitution states: “No person, firm, association, or corporation shall be authorized or permitted to use the streets, avenues, alleys, or public places of any city, town or village for the construction or operation of any public utility or private enterprise, without first obtaining the consent of the proper authorities of such city, town, or village.” The Alabama Supreme Court has held that Section 220 gives cities the right to consent or withhold consent to operation of a utility on its street as a veto power, and is not an affirmative power to grant utility franchises. [Alabama Power Co.](#), 527 So. 2d at 684. In other words, under the Court’s interpretation of Section 220, a city does not have “an absolute right to choose any supplier it desires.” *Id.* Additional statutory authority is required to support municipal franchise agreements. *Id.* at 687. Furthermore, [Section 228 of the Alabama Constitution](#) prohibits municipalities with a population of over 6,000 from granting franchises for a period longer than 30 years.

**How can cities intervene in Public Service Commission proceedings?** Pursuant to statute, “every person, firm, co-partnership, association, or organization affected thereby may by petition intervene and become a party to any proceeding before the commission.” [Ala. Code Ann. 37-1-87](#). Further, under [Ala. Admin. Code. § 770-X-4-.08\(3\)](#), “[a]nyone entitled under the law to complain to the Commission may petition for leave to intervene in any pending proceeding prior to or at the time it is called for hearing, but not after, except for good cause shown. Petitions shall set forth the grounds of their proposed intervention; the position and interest of the petitioner in the proceeding; and if affirmative relief is sought, should conform to requirements for a formal complaint.” In practice, the Southeast Energy Efficiency Alliance has explained that “the public often has minimal

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<sup>27</sup> *Educational Resources: Electric*, HUNTSVILLE UTILITIES, <https://perma.cc/X6BM-KJMG>.

<sup>28</sup> *AMEA Power*, ALA. MUN. ELEC. AUTH., <https://perma.cc/T6L2-ALGL>.

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opportunities to participate in commission proceedings and limited information on participation,” but it is unclear if this extends to municipal involvement.<sup>29</sup>

**Does the state have an obligation to serve statute?** Yes, Alabama’s obligation to serve statute states that “[e]very utility shall render adequate service to the public and shall make such reasonable improvements, extensions and enlargements of its plants, facilities and equipment as may be necessary to meet the growth and demand of the territory which it is under the duty to serve.” [Ala. Code § 37-1-49](#).

**Has the state passed enabling legislation for community choice aggregation (CCA)?** No, Alabama currently lacks enabling legislation for community choice aggregation programs.<sup>30</sup>

## 7. SECONDARY SOURCES

Justin Murdock, *Sweet Home Alabama: Navigating Home Rule Status Through State Federalism*, 4 PRINCETON L. J. F. 14 (Winter 2024), <https://perma.cc/SX5P-95PC> (breaking down Alabama’s non-Home Rule status and the implications of Dillon’s rule related to municipal powers and taxation).

J. Michael Allen III & Jamison W. Hinds, *Alabama Constitutional Reform*, 53 ALA. L. REV. 1 (Fall 2001), <https://perma.cc/CX2G-A4Q9> (considering constitutional reform in Alabama, cataloguing the issues with Alabama’s 1901 Constitution, and recounting past constitutional reform efforts).

## 8. MISCELLANEOUS

Alabama’s constitution is one of the longest in the United States, primarily because counties lack legislative autonomy. Counties have no general grant of power—the state legislature must delegate any powers counties hold through constitutional amendments or state statutes (known as “local legislation”).<sup>31</sup>

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<sup>29</sup> SOUTHEAST ENERGY EFFICIENCY ALLIANCE, ALABAMA: STATE GUIDE TO UTILITY ENERGY PLANNING (2023), <https://perma.cc/5H9F-MCEU>.

<sup>30</sup> *Community Choice Aggregation*, U.S. ENV’T PROTECTION AGENCY, <https://perma.cc/8GKA-3GWN>.

<sup>31</sup> *Home Rule*, ENCYCLOPEDIA OF ALABAMA, <https://perma.cc/9AG5-U9UW>.