

# NAVIGATING STATE LAW IN LOCAL CLIMATE ACTION MICHIGAN



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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 Michigan. 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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MICHIGAN

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

Michigan gives municipalities broad home rule powers through its constitution and by statute. The state recognizes a variety of forms of local government, including counties, cities, villages, and townships. This chapter focuses primarily on cities incorporated under the Home Rule City Act, though the information presented is relevant for other types of local governments.

Michigan's constitution gives cities the power to adopt home rule charters and expressly provides that constitutional provisions and statutes shall be construed liberally in cities' favor. Statutes, primarily the Home Rule City Act itself, provide greater detail as to Michigan cities' municipal home rule authority.

### 1.1 Constitutional Provisions

[Mich. Const. art. 7, § 22](#): “Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.”

[Mich. Const. art. 7, § 34](#): “The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.”

### 1.2 Statutory Provisions

In 1909, Michigan passed the Home Rule City Act (HRCA), which includes provisions granting specific powers to municipalities. Those include, among other powers, zoning, regulatory authority over health and welfare, and the authority to enforce any other ordinances not in conflict with state law.

The HRCA includes [Mich. Comp. Laws § 117.4j](#), which provides for permissible municipal charter provisions, including: “(a) Laying and collecting rents, tolls, and excises. (b) Regulating and restricting the locations of oil and gasoline stations. (c) The establishment of districts or zones within which the use of land and structures, the height, area, size, and location of buildings, the required open spaces for light and ventilation of buildings, and the density of population may be regulated by ordinance. The zoning ordinance provisions applicable to 1 or more districts may differ from those applicable to other districts. If a city is incorporated, or if territory is annexed to a city incorporated under this act, the zoning ordinance provisions applicable to the territory within the newly incorporated city or the annexed territory must remain in effect for 2 years after the incorporation or annexation unless the legislative body of the city lawfully adopts other zoning ordinance provisions. (d) Except as otherwise provided in this subdivision, the regulation of trades, occupations, and amusements within city boundaries, if

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the regulations are not inconsistent with state or federal law, and the prohibition of trades, occupations, and amusements that are detrimental to the health, morals, or welfare of the inhabitants of that city . . . (j) The enforcement of police, sanitary, and other ordinances that are not in conflict with the general laws.”

Cities with populations between 3,000 and 10,000 are considered home rule cities, but are governed by the Fourth Class City Act. See [Mich. Comp. Laws §§ 215-1895-I to 215-1895-XXXIII](#). Many localities organized as villages are governed by the General Village Law or are incorporated as home rule villages.<sup>20</sup> See [Mich. Comp. Laws §§ 78.1 to 78.28](#).

The Michigan Supreme Court has explained that the home rule system in place in Michigan since enacting the HRCA is “one of general grant of rights and powers, subject only to certain enumerated restrictions instead of the earlier method [prior to the 1908 Constitution] of granting enumerated rights and powers definitely specified.” [City of Farmington v. Farmington Survey Comm’n](#), 2024 WL 4030631, at \*4 (Mich. App. Sept. 3, 2024) (quoting [Detroit v. Walker](#), 445 Mich. 682, 690 (1994)). “[I]t is clear that home rule cities enjoy not only those powers specifically granted, but they may also exercise all powers not expressly denied. Home rule cities are empowered to form for themselves a plan of government suited to their unique needs and, upon local matters, exercise the treasured right of self-governance.” *Id.*

## 2. HOME RULE CHARTERS

Michigan cities can adopt home rule charters, enabling them to exercise the home rule authority guaranteed by the state constitution and implemented by the HRCA. [Mich. Const. art. 7, § 22](#). Charters can only be adopted by local referendum and a majority vote of city residents.<sup>21</sup> Charter revisions can be initiated through a resolution adopted by three-fifths of a city’s legislative body, or a petition signed by at least five percent of the registered voters, unless the current charter states otherwise. [Mich. Comp. Laws § 117.21](#). Proposed amendments must be “confined to one subject,” *Id.* § 117.21(3), and must be submitted to the governor for review. *Id.* [§ 117.22](#). If the amendment was proposed by the city’s legislative body and the governor rejects it, the proposed amendment can still get submitted to the electors if 2/3 of the legislative body members vote in favor. *Id.* A proposed city charter amendment is [adopted](#) by a majority vote of the electorate.<sup>22</sup>

As of August 2025, Michigan has 281 incorporated cities—276 of which have adopted home rule charters.<sup>23</sup> Michigan law also allows for villages to adopt either a home rule charter or to operate under the General Law Village Act (under which those general law villages can still make amendments to their basic laws by following

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<sup>20</sup> See *Organization of City and Village Government in Michigan*, MICH. MUN. LEAGUE (Oct. 2024), at 3, <https://perma.cc/RR2D-JA6Y> (explaining that village home rule was implemented by the Home Rule Village Act).

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

<sup>22</sup> See *City Charter Revision: Step by Step*, MICH. MUN. LEAGUE (2024), <https://perma.cc/ZJF5-9H8K>.

<sup>23</sup> MICH. MUN. LEAGUE, *supra* note 20, at 5.

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statutory procedures in the [Home Rule Village Act](#)). Although Michigan categorizes political subdivisions based on population, there is essentially no difference in home rule power between the different city classes.<sup>24</sup>

### 3. PREEMPTION OF LOCAL LAW

Michigan courts recognize state preemption of local laws where (1) the ordinance directly conflicts with the state statutory scheme, or (2) where the state statute completely occupies the field of legislation. [Azzar v. City of Grand Rapids](#), 2005 WL 2327076, at \*1; see also [Michigan Gun Owners, Inc. v. Ann Arbor Pub. Schools](#), 502 Mich. 695, 703–10 (2018) (explaining express and implied preemption in the gun regulation context); [DeRuiter v. Township of Byron](#), 505 Mich. 130, 140 (2020). The state can stop short of fully preempting local laws by choosing to limit local regulation. In that case, “local regulation is permissible only within certain parameters.” [City of Farmington](#), 2024 WL 4030631 at \*5; see also [Gmoser’s Septic Serv., LLC v E. Bay Charter Twp.](#), 831 N.W.2d 881, 887 (Mich. Ct. App. 2013) (holding that the Michigan Legislature limited the preemptive effect of state septage laws by permitting local governments to impose stricter requirements on the disposal of septage).

#### 3.1 Field Preemption

Field preemption occurs when a state statute expressly or impliedly occupies an entire legislative field, leaving no room for local regulation. In [People v. Llewellyn](#), Michigan’s Supreme Court set out a framework for field preemption analysis:

- First, “where the state law expressly provides that the state’s authority to regulate in a specified area of the law is to be exclusive, there is no doubt that municipal regulation is preempted.” 401 Mich. 314, 323 (1977).
  - As to this factor, a court begins a preemption analysis by “determining whether the state law expressly provides that the state’s authority to regulate in a specified area of the law is to be exclusive . . .” [Michigan Gun Owners](#), 502 Mich. at 703 (cleaned up). Failing to mention one area of law alongside others that are preempted can also support an inference that the legislature intended not to preempt such area. For example, in [Michigan Gun Owners](#), the Michigan Supreme Court found that state law does not expressly preempt school districts’ authority to regulate guns because “schools in particular are not on the preempted list.” 502 Mich. at 703–04, 711.
- Second, a court may find field preemption “implied upon an examination of legislative history.” *Id.*
- Third, “the pervasiveness of the state regulatory scheme may support a finding of [field] preemption.” This is prong of the analysis is “not generally sufficient by itself to infer preemption,” but should be considered as one factor. *Id.*

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<sup>24</sup> *Id.* at 2.

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- Fourth, “the nature of the regulated subject matter may demand exclusive state regulation to achieve the uniformity necessary to serve the state’s purpose or interest.” *Id.* at 324.

As one example, Michigan has preempted the whole field of mortgage loans through the following statutory provision:

(1) The laws of this state relating to the brokering, making, servicing, and collecting of mortgage loans prescribe rules of conduct upon citizens generally, *comprise a comprehensive regulatory framework intended to operate uniformly throughout the state under the same circumstances and conditions, and constitute general laws of this state.* (2) Silence in the statutes of this state with respect to any act or practice in the brokering, making, servicing, or collecting of mortgage loans shall not be interpreted to mean that the state has not completely occupied the field or has only set minimum standards in its regulation of brokering, making, servicing, or collecting of mortgage loans. (3) It is the intent of the legislature to entirely preempt municipal corporations and other political subdivisions from the regulation and licensing of persons engaged in the brokering, making, servicing, or collecting of mortgage loans in this state.

[Mich. Comp. Laws § 445.1645](#) (emphasis added).

### 3.2 Conflict Preemption

Conflict preemption in Michigan applies when “the [local] ordinance is in direct conflict with the state statutory scheme,’ such that conformity with both is not possible.” [Michigan Gun Owners](#), 502 Mich. at 703 (quoting [Llewellyn](#), 401 Mich. at 322).

For example, in [Ter Beek v. City of Wyoming](#), the Michigan Supreme Court held that a city ordinance prohibiting the growth and use of medical marijuana was preempted by a state statute, the Michigan Medical Marijuana Act (MMMA). 846 N.W.2d 531, 544 (2014). The court reasoned that the ordinance “directly conflicts with the MMMA not because it generally pertains to marijuana, but because it permits registered qualifying patients, such as Ter Beek, to be penalized by the City for engaging in MMMA-compliant medical marijuana use.” *Id.*

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

Michigan has passed only a few laws that may affect local climate action. In 2016, the state passed a [law](#) preempting local governments from regulating single-use and reusable containers; [Senate Bill 228](#), introduced in March 2023, sought to repeal that preemptive law but was ultimately unsuccessful. There is also recently [proposed legislation](#) to preempt municipalities from imposing prohibitions on the installation of natural gas infrastructure but that had not been enacted at the time of writing.

**Renewable Energy Siting.** [Public Law 233 of 2024](#): In response to growing local restrictions on renewable energy deployment, this law (a) establishes limits on the restrictions that local governments can adopt and (b) permits

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the Michigan Public Service Commission (PSC) to step in when local governments exceed those limits by preempting from regulation utility-scale wind, solar, and battery storage facilities.<sup>25</sup> The PSC will “assume control over wind projects of [100 MW or larger], solar projects of [50 MW or larger], and battery storage projects of [50 MW or larger], unless the local government where the proposed project is located adopts a compatible renewable energy ordinance (CREO) that is ‘no more restrictive’ than state requirements.”<sup>26</sup> If the PSC does take over an application, it can preempt any local restrictions that would otherwise apply.

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

Home rule cities are generally afforded deference by Michigan courts in cases involving home rule and preemption issues. Though municipalities are limited by the Michigan Constitution and state law, the mere existence of a state law does not prohibit municipalities from enacting ordinances. *Rental Prop. Owners Ass’n of Kent Cty. v. City of Grand Rapids*, 455 Mich. 246, 262 (1997). Home rule cities enjoy not only those powers specifically granted but may also exercise powers not expressly denied. See *Adams Outdoor Advert. v. City of Holland*, 600 N.W.2d 339, 342 (Mich. Ct. App. 1999). Municipal ordinances exercising police powers are presumed to be constitutional and the burden is on the challenging party to prove that it has no real or substantial relation to public health, morals, safety, or general welfare. *Rental Prop. Owners Ass’n of Kent Cty.*, 455 Mich. at 253.

The cases below address how Michigan courts balance the scope of municipal home rule authority with the state legislature’s power to limit local governments.

- *DeRuiter v. Township of Byron*, 505 Mich. 130 (Mich. 2020): In this case, the Michigan Supreme Court addressed whether Byron Township’s zoning ordinance, which regulated the location of registered medical marijuana caregiver activities, conflicted with the Michigan Medical Marihuana Act (MMMA). The local ordinance required that medical marijuana caregivers cultivate marijuana as a “home occupation” at their primary residence and also required caregivers to obtain a permit for cultivation. *Id.* at 134. Christie DeRuiter, a registered primary caregiver and qualifying patient under the MMMA, began cultivating marijuana on commercially zoned property and was ordered by the township to cease the cultivation due to zoning violations. *Id.* at 137. She filed a lawsuit, seeking a declaratory judgment that the zoning ordinance conflicted with and was preempted by the MMMA. The Michigan Supreme Court concluded that the Byron Township Zoning Ordinance did not violate the MMMA. The Court clarified that the MMMA protects caregivers from penalties for compliant medical use of marijuana, but it does not prevent local regulations that place reasonable limitations on where medical marijuana may be cultivated. *Id.* at 143–44. The Court distinguished this case from previous rulings like *Ter Beek*, cited above, where a local ordinance completely

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<sup>25</sup> See Matthew Eisenson, *Michigan’s New Siting Process Gives Some Authority to State Regulators, But Under What Circumstances?*, SABIN CENTER FOR CLIMATE CHANGE LAW (Aug. 7, 2024), <https://perma.cc/D85E-C2NM>.

<sup>26</sup> *Id.*

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banned medical marijuana cultivation, in direct conflict with the MMMA. *Id.* at 144. In contrast, the Byron Township ordinance merely regulated where cultivation could occur.

- [\*Associated Builders & Contractors v. City of Lansing\*](#), 499 Mich. 177 (2016): In this case, the Michigan Supreme Court addressed the constitutionality of a city ordinance requiring contractors working on municipal construction projects to pay prevailing wages. *Id.* 181. The plaintiff, a trade association representing contractors, argued that the ordinance was unconstitutional based on a 1923 decision from the Michigan Supreme Court that held that regulating wages for third-party workers on municipal projects was a matter of state, not local, concern. *Id.* But in this case the Supreme Court upheld the ordinance, pointing out that the state’s 1963 constitution expanded cities’ broad authority to enact ordinances relating to their municipal concerns, which included wage regulations for contractors working on city-funded projects. *Id.* at 183–92.
- [\*Adams Outdoor Advert. v. City of Holland\*](#), 600 N.W.2d 339 (Mich. Ct. App. 1999), *aff’d*, 625 N.W.2d 377 (Mich. 2001): In this case the City of Holland appealed a decision finding that the city’s ban on billboards exceeded the city’s home rule authority. On appeal, the Michigan Court of Appeals reversed, holding that matters need not be expressly listed in the state constitution to be valid exercises of local authority: “a home rule city has broad authority to enact ordinances for the benefit of the health, safety, and welfare of its residents. Home rule cities are not limited to only those powers expressly enumerated.” *Id.* at 343. Because Holland’s authority to enact the ordinance was not prohibited by law, the court held that the ordinance did not violate the Home Rule City Act. *Id.* at 344.
- [\*Miller v. Fabius Tp. Bd.\*](#), 114 N.W.2d 205 (Mich. 1962): In this case, the plaintiff challenged an ordinance adopted by the Fabius Township Board that restricted powerboat racing and water skiing on Pleasant Lake between 4:00 p.m. and 10:00 a.m. *Id.* at 206. The plaintiff, a landowner on the lake, asserted that Michigan’s motorboating laws preempted local regulation. *Id.* at 206–07. The plaintiff argued that state statutes regulating motorboating and water-skiing activities already existed, leaving no room for local regulation, particularly regarding the specific hours for water skiing. *Id.* The Supreme Court of Michigan rejected this claim, holding that the motorboating laws did not fully occupy the field. Indeed, the “mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements.” *Id.* at 207–08 (quoting 37 Am. Jur., Municipal Corporations, § 165). While state law imposed general restrictions, municipalities retained authority to enact additional regulations addressing local safety concerns. *Id.* at 209. Citing the principle that local laws may supplement—but not conflict with—state law, the court upheld the ordinance as a valid exercise of the township’s police power.
- [\*People v. Bahnke\*](#), 2024 WL 647931 (Mich. App. Feb. 15, 2024): The City of Sterling Heights Code, section 20-115, required fireworks vendors to hand out a flyer to purchasers and display signs that provide notice to customers of city and state laws regarding fireworks usage. *Id.* at \*1. The defendant in this case did not hand out flyers and was issued a citation for noncompliance with the ordinance. *Id.* On appeal at

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the Michigan Court of Appeals, the defendant argued that the Michigan Fireworks Safety Act (MFSA) preempted Sterling Heights’ ordinance because it directly conflicts with the MFSA and because the field of fireworks sales is exclusively occupied by the state. *Id.* The MFSA does not allow local governments to regulate the sale of fireworks. *Id.* at \*2. Agreeing with defendant’s argument, the Court held that the Sterling Heights’ ordinance directly conflicts with the MFSA because it regulates the sale of fireworks by prohibiting the sale of fireworks if the vendor does not provide a flyer to the customer at the point of each sale. *Id.* at \*3. By “requiring that sellers of fireworks supply their customers with detailed notices *when selling fireworks*, and imposing a fine upon them if they fail to comply,” the ordinance regulates the sale of fireworks and is therefore preempted due to direct conflict with the MFSA. *Id.* at \*4. The Court did not address plaintiff’s claim of field preemption.

#### 4.1 Other Relevant Cases

[City of Detroit v. Walker](#), 445 Mich. 682 (Mich. 1994) (tracing the development of municipal home rule in Michigan and affirming that the Detroit City Charter “naturally adopt[s] future amendments” based on the home rule provisions of its charter).

[Tally v. City of Detroit](#), 227 N.W.2d 214 (Mich. Ct. App. 1974) (stating that the exercise of police power through enactment of a municipal ordinance must be reasonable “[f]irst, that it must be for the public welfare and, [s]econd, that the measures adopted must have relation to the purpose sought to be accomplished”).

## 5. BUILDING CODES

Michigan has a statewide construction code applicable in all political subdivisions of the state, which precludes cities from adopting their own local building codes. See [Mich. Comp. Laws § 125.1508a](#). The statewide code consists of “the international residential code, the international building code, the international mechanical code, the international plumbing code, the international existing building code, and the international energy conservation code published by the international code council and the national electrical code published by the national fire prevention association, with amendments, additions, or deletions as the director determines appropriate.” [Mich. Comp. Laws § 125.1504\(2\)](#). Michigan has adopted the 2021 editions of the International Code Council’s (ICC) International Building Code (IBC) and International Energy Conservation Code (IECC), and the 2015 edition of International Residential Code, along with a few other 2015 and 2021 code editions.<sup>27</sup>

While Michigan’s building code applies statewide, local governments may “choose to administer and enforce” the code. [Mich. Comp. Laws § 125.1508a\(2\)](#); [Mich. Comp. Laws § 125.1508b\(1\)](#). If a locality chooses to do so, it must designate an “enforcing agency” within the local government—subject to State Construction Code Commission approval—to carry out the administration and enforcement of the building code. [Mich. Comp. Laws § 125.1508b\(2\)](#); [Mich. Comp. Laws § 125.1502a\(t\)](#); [Mich. Comp. Laws § 125.1508a\(5\)](#); [Mich. Comp. Laws](#)

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<sup>27</sup> Michigan, INT’L CODE COUNCIL, <https://perma.cc/86XX-CRAZ>.

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[§ 125.1508b\(6\)](#). If a local government does not administer and enforce the code, the state assumes responsibility, unless the county in which the municipality is located files a notice of intent to administer and enforce the code. [Mich. Comp. Laws § 125.1508b\(4\)](#).

While the State Construction Code preempts local adoption of building codes, municipalities can still enact local property maintenance ordinances. These are ordinances that set standards for the condition of a property, like basic upkeep requirements. In 2005, the Michigan Court of Appeals held in [Azzar v. City of Grand Rapids](#) that the Stille-DeRossett-Hale Single State Construction Code Act and the State Construction Code do not preempt local governments from adopting their own building maintenance codes. 2005 WL 2327076 (Mich. App. Sept. 22, 2005). Generally building codes set standards for construction and focus on how buildings are constructed, while building maintenance codes govern the ongoing condition of existing structures, including requirements for “basic equipment, light, ventilation, heating, sanitation and fire safety.”<sup>28</sup> This decision created a pathway for municipalities to pass maintenance codes, and allows municipalities to defend similar ordinances.

## 6. ELECTRIC UTILITY CONSIDERATIONS

**What is the relevant utility regulatory body in the state? Who and what does it regulate?** The Michigan Public Service Commission (MPSC) has statutory authority “to regulate all public utilities in the state except a municipally owned utility[.]” [Mich. Comp. Laws § 460.6\(1\)](#); [Mich. Comp. Laws § 460.06a\(15\)](#). Specifically, the MPSC “is vested with the power and jurisdiction to regulate all rates, fares, fees, charges, services, rules, conditions of service, and all other matters pertaining to the formation, operation, or direction of public utilities. The public service commission is further granted the power and jurisdiction to hear and pass upon all matters pertaining to, necessary, or incident to the regulation of public utilities[.]” [Mich. Comp. Laws § 460.6\(1\)](#). Despite municipal electric utilities’ general carve-out from MPSC jurisdiction, they are subject to state’s energy-efficiency portfolio standard set under the [Clean and Renewable Energy and Energy Waste Reduction Act](#) of 2008.

**What authority, if any, do municipalities have over utilities?** Municipalities have very limited authority over electric and gas utilities because most aspects of electric service are exclusively governed by the MPSC, including ratemaking, infrastructure siting, and resource planning. [Mich. Comp. Laws § 460.6\(1\)](#). However, and as noted in the preceding paragraph, cities can exercise reasonable control over their streets, subject to other constitutional provisions. Municipally owned utilities have far more autonomy over their electric service, as they are largely not governed by the MPSC.

**Can cities enter into franchise agreements with utilities?** Yes, under [Mich. Const. art. VII, § 29](#), “No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, township, city or village; or to transact local business therein without first obtaining a franchise from the

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<sup>28</sup> 2025 PROPERTY MAINTENANCE CODE OF NEW YORK STATE, NEW YORK STATE DEPARTMENT OF SERVICE at v (July 2025).

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township, city or village. Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government.”

**How can cities intervene in Public Service Commission proceedings?** A municipality may petition for leave to intervene in MPSC proceedings. [Mich. Admin. Code. Rev. § 792.10410](#). Interested parties must generally file a petition for leave to intervene with the MPSC at least seven days before the date set for the initial hearing or prehearing conference. *Id.* § 792.10410(1). A petition for leave to intervene “must set out clearly and concisely the facts supporting the petitioner’s alleged right or interest, the grounds of the proposed intervention, and the position of the petitioner in the proceeding to fully and completely advise the parties and the commission of the specific issues of fact or law to be raised or controverted. If affirmative relief is sought, the petition for leave to intervene must specify that relief. Requests for relief may be stated in the alternative.” *Id.* § 792.10410(2).

**Does the state have an obligation to serve statute?** Michigan does not have a statute explicitly requiring electric utilities to provide service to anyone who requests it in their service territory, but [Mich. Comp. Laws § 460.10](#) provides a general statement of purpose, which includes service assurances: “The purpose of sections 10a through 10bb is to do all of the following: (a) To ensure that all persons in this state are afforded safe, reliable electric power at a competitive rate. (b) To improve the opportunities for economic development in this state and to promote financially healthy and competitive utilities in this state. (c) To maintain, foster, and encourage robust, reliable, and economic generation, distribution, and transmission systems to provide this state’s electric suppliers and generators an opportunity to access regional sources of generation and wholesale power markets and to ensure a reliable supply of electricity in this state.”

**Has the state passed enabling legislation for community choice aggregation (CCA)?** No, Michigan currently lacks enabling legislation for community choice aggregation programs.<sup>29</sup>

## 7. SECONDARY SOURCES

Michigan Municipal League, <https://perma.cc/75VH-HPZS>: “The Michigan Municipal League is dedicated to making Michigan’s communities better by thoughtfully innovating programs, energetically connecting ideas and people, actively serving members with resources and services, and passionately inspiring positive change for Michigan’s greatest centers of potential: its communities.”

Michigan Municipal League, *Top 13 Legal Cases Consequential to Michigan Municipalities*, <https://perma.cc/AF79-7EPY> (booklet explaining home rule in Michigan and thirteen important cases in which the Michigan Municipal League’s Legal Defense Fund participated).

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<sup>29</sup> *Community Choice Aggregation*, U.S. ENV’T PROTECTION AGENCY, <https://perma.cc/8GKA-3GWN>.