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NAVIGATING STATE LAW IN LOCAL CLIMATE ACTION
MISSOURI

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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 Missouri. The full report, as well as other state-specific reports, are available in Columbia Law School's Scholarship Archive.

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

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.[1] In the vast majority of states, this "commitment to local lawmaking capacity [is] codified in [state] constitutions and statutes."[2] 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.[3] Today, all but three states provide some level of home rule—forty-one via the state's constitution and six through statute.[4]

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."[5] When Dillon's Rule applies, local governments' ability to regulate is more restricted.

[1] *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 21ST CENTURY (2020), https://perma.cc/A3VP-NXZZ.
[2] Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 2011 (2018), https://perma.cc/3B53-S66J.
[3] *See* NAT'L LEAGUE OF CITIES, *supra* note 1.
[4] *See* Briffault, *supra* note 2.
[5] *See City of Clinton v. Cedar Rapids & Missouri Railroad Co.*, 24 Iowa 455 (1868).

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.[6] However, even in states with expansive home rule systems, local authority is limited by the almost absolute power of state preemption.[7]

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.[8] 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").[9] 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.[10] 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."[11] 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:

[6] *See* Briffault, *supra* note 2, at 2012.
[7] *Id*.; Diller, *supra* note 1, at 1126–27.
[8] *See* *Arizona v. United States*, 567 U.S. 387, 398–99 (2012) (explaining the principle of supremacy).
[9] *See* *Holt's Cigar Co. v. City of Philadelphia*, 608 Pa. 146, 153 (2011).
[10] *See, e.g.*, *City of Canton v. State*, 95 Ohio St. 3d 149, 151–52 (Ohio 2002).
[11] *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,[12] ones that regulate alcohol ordinances,[13] and others that occupy the field of firework regulation.[14] Historically, preemption "consisted of a judicial determination of whether a local law conflicted with preexisting state law."[15] 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."[16] 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.[17] A quintessential example of this style of preemption occurred in 2016, when Alabama enacted legislation preempting local

[12] *See, e.g.*, *Mayor of Ocean Springs v. Homebuilders Ass'n of Mississippi*, 932 So. 2d 44 (Miss. 2006).
[13] *See, e.g.*, *State v. Williams*, 283 N.C. 550 (1973).
[14] *See, e.g.*, *People v. Bahnke*, 2024 WL 647931 (Mich. App. Feb. 15, 2024).
[15] *See* Briffault, *supra* note 2, at 1997.
[16] *Id*.
[17] *See generally* Briffault, *supra* note 2.

minimum wage regulation just two weeks after Birmingham passed an increase.[18] 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.[19] 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.

* * *

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.

[18] *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.

[19] 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)).

MISSOURI

1. DELEGATION OF HOME RULE AUTHORITY AND POLICE POWER

Missouri's constitution has granted home rule authority to cities of five thousand or more that have adopted a home rule charter. Home rule cities can enact local laws pursuant to "all powers which the general assembly of the state of Missouri has authority to confer upon any city" so long as they are "consistent" with state law. Mo. Const. art. VI, § 19(a). In order to supersede local authority, the Missouri General Assembly's law must be a general law that applies to all municipalities rather than a special law that applies to only one municipality. *See State ex re. Dalton v. Holekamp Lumber Co.*, 340 S.W.2d 678, 681 (Mo. 1960). Local ordinances are "presumed to be valid and lawful." *Zang v. City of St. Charles*, 659 S.W.3d 327, 331 (Mo. 2023).

1.1 Constitutional Provisions

Mo. Const. art. VI, § 18(a): "Any county having more than 85,000 inhabitants . . . may frame and adopt and amend a charter for its own government."

Mo. Const. art. VI, § 19: "Any city having more than five thousand inhabitants or any other incorporated city as may be provided by law may frame and adopt a charter for [their] own government."

Mo. Const. art. VI, § 19(a): "Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such powers are consistent with the constitution of this state and are not limited or denied either by the charter so adopted or by statute."

1.2 Statutory Provisions

Municipalities in Missouri are classified in four categories: (1) villages (fewer than 500 people); (2) fourth class cities (500 to 2,999 people); (3) third class cities (3,000 or more people); and (4) "constitutional charter cities" (5,000 or more people that have adopted home rule charters pursuant to the Missouri Constitution).[20] Mo. Rev. Stat. §§ 72.050, 72.040, 72.030, 82.010.

Mo. Rev. Stat. § 82.020: "Any city or town . . . which now has or which may hereafter have a population of more than five thousand inhabitants . . . may frame and adopt or amend a charter for its own government by complying with the provisions of sections 19 and 20 of article VI of the constitution of this state, or any amendments thereof."

Villages, fourth class cities, and third class cities that are ineligible to adopt home rule charters possess the powers and forms of government defined in Missouri state law. *See* Mo. Rev. Stat. ch. 80 (villages); ch. 79 (fourth class cities); ch. 77–78 (third class cities); *see generally* Mo. Rev. Stat. tit. 7 (including provisions applicable to all

[20] Missouri once had first- and second-class cities as well, but reference to those classes has been repealed in Missouri's statutes. *The Structure of Missouri Local Government – A (Brief) Overview* 2, https://perma.cc/7C3W-A6LR.

cities). For example, villages have the power to pass ordinances on an enumerated list of topics, including the regulation of nuisance, firefighting, bridges, storage of weapons, gambling, and several others. Mo. Rev. Stat. § 80.090.

Missouri law also contains a provision that requires all cities in Missouri to conform to state law: Mo. Rev. Stat. § 71.010: "Any municipal corporation in this state, whether under general or special charter, and having authority to pass ordinances regulating subjects, matters and things upon which there is a general law of the state, unless otherwise prescribed or authorized by some special provision of its charter, shall confine and restrict its jurisdiction and the passage of its ordinances to and in conformity with the state law upon the same subject."

2. HOME RULE CHARTERS

A number of eligible municipalities in Missouri have adopted home rule charters pursuant to article VI, section 19 of the state constitution. City charters construe local power broadly under their home rule authority. For example, the Kansas City Charter describes its powers with the following language: "The City shall have all powers which the General Assembly of the State of Missouri has authority to confer upon any City, provided such powers are consistent with the Constitution of this State and are not limited or denied either by this Charter or by statute. The City shall, in addition to its home rule powers, have all powers conferred by law." Kansas City, Mo. Charter, § 102.

The five largest cities in Missouri—Kansas City, St. Louis, Springfield, Columbia, and Independence—have all adopted city charters.

3. PREEMPTION OF LOCAL LAW

Local laws that are properly enacted pursuant to a municipality's home rule authority can still be invalid if they are preempted by state law. Under the Missouri Constitution, preemption occurs when a local ordinance is not "consistent with the constitution of this state and are not limited or denied . . . by statute." Mo. Const. art. VI, § 19(a). However, Missouri's General Assembly has substantially expanded state preemption by statute, which provides that any city legislating on a subject for which there is a general state law must "confine and restrict its jurisdiction and the passage of its ordinances to and in conformity with the state law upon the same subject." Mo. Rev. Stat. § 71.010.

3.1 Express Preemption

Express preemption occurs when "the General Assembly has explicitly proscribed local regulation in a specific area." *Coop. Home Care, Inc. v. City of St. Louis*, 514 S.W.3d 571, 579 (Mo. 2017). For example, Missouri has expressly preempted local regulation of pesticide use. Under Mo. Rev. Stat. § 281.005, state law regarding pesticide use "shall preempt all ordinances, rules and regulations of political subdivisions relating to the use of [pesticides]."

3.2 Field Preemption

Field preemption is a recognized form of implied preemption by Missouri courts and "occurs when the General Assembly has created a state regulatory scheme that is so comprehensive that it reasonably can be inferred that the General Assembly intended to occupy the legislative field, leaving no room for local supplementation." *Coop. Home Care*, 514 S.W.3d at 579. For example, in *Alumax Foils v. City of St. Louis*, the court held that "the State completely occupied and preempted the field of use taxes [] and did not carve out a process for cities to enact use taxes as it did for sales taxes." *Alumax Foils*, 959 S.W.2d 836, 839 (Mo. Ct. App. 1997).

3.3 Conflict Preemption

Conflict preemption is another recognized form of preemption by Missouri courts and "occurs when a local ordinance conflicts with a specific state statute either because it 'prohibits what the statute permits' or because it 'permits what the statute prohibits.'" *Coop. Home Care*, 514 S.W.3d at 579. In order for state law to preempt local law, the two must be in direct conflict; a local law that contains additional requirements to a state law is not conflict preempted. *Id.* at 579. In *City of St. Peters v. Roeder*, for example, the Missouri Supreme Court reviewed an ordinance that created a moving violation but assessed no points for the violation. The court held that the ordinance conflicted with a state law that requires that two points be assessed for the same type of moving violation covered in the ordinance. 466 S.W.3d 538, 541 (Mo. 2015).

3.4 State Laws with Potential for Local Climate Preemption

Preemption laws are a growing trend in Missouri[21] and, as a conservative state in which Republicans control each branch of government, climate preemption laws face relatively fewer headwinds. In addition to the two preemption laws listed below, the state has adopted or considered other laws that are hostile to climate adaptation and mitigation efforts (described in the "Miscellaneous" section below). While they do not necessarily preempt local action, they provide insight into the state government's position on climate policy and the future of climate preemption laws.

Building Electrification. Mo. Rev. Stat. § 67.309: "No political subdivision of this state . . . shall adopt an ordinance, resolution, regulation, code, or policy that prohibits, or has the effect of prohibiting, the connection or reconnection of a utility service based upon the type or source of energy to be delivered to an individual customer." This includes "natural gas, propane gas, electricity, and any other form of energy provided to an end user customer." Effectively, this provision prevents municipalities from enacting building electrification requirements.

[21] *See, e.g.*, Josh Merchant & Meg Cunningham, *Missouri's Legislature Is Restricting Local Government's Ability to Pass Their Own Laws*, ST. LOUIS PUB. RADIO (May 9, 2024), https://perma.cc/QJ5W-XCJA.

Plastic Bags. Mo. Rev. Stat. § 260.283: "[N]o political subdivision shall impose any ban, fee, or tax upon the use of either paper or plastic bags for packaging of any item or good purchased from a merchant, itinerant vendor, or peddler."

Missouri House Bill 939 was introduced in January 2025. If it had passed, the law would have barred local governments from requiring green building practices—such as those aimed at sustainability, energy efficiency, or environmental responsiveness—for residential, commercial, or industrial buildings if those requirements are seen as threatening the affordability of construction, maintenance, repair, or renovation. It passed the state House of Representatives in March 2025 but died in the Missouri Senate.

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

Missouri courts have held that a local ordinance is valid if: "(1) the ordinance is not preempted by statute, and (2) the locality acted within the constitutional parameters of the authority delegated to it in its charter." *Coop. Home Care*, 514 S.W.3d at 578. As a general principle, ordinances are presumed valid by courts and should be construed as such unless "expressly inconsistent or in irreconcilable conflict with a statute or provision of the Missouri Constitution." *Missouri Bankers Ass'n v. St. Louis County*, 448 S.W.3d 267, 271 (Mo. 2014) (internal citations omitted).

The cases below provide further detail on how Missouri courts have interpreted the scope of municipal home rule authority under the constitutional amendment and state statutes, and the ability of state law to preempt "inconsistent" local laws.

- *City of Kansas City v. Carlson*, 292 S.W.3d 368 (Mo. Ct. App. 2009): This case is helpful for understanding the limits of conflict preemption. The issue in the case was whether a Kansas City ordinance banning smoking in enclosed public spaces was preempted by state law. The plaintiff argued that the ordinance conflicted with the state's Indoor Clean Air Act because the Act excludes bars and billiard parlors from its definition of public places, which meant that it "permits" smoking in those places. The court held that the state law does not "permit" smoking but "[r]ather, it leaves those places unregulated, which creates no conflict with municipal regulation that enlarges on the state scheme." *Id*. at 370. In other words, local requirements that are additional to state law did not create a conflict between the ordinance and the statute.

- *Missouri Bankers Ass'n v. St. Louis County*, 448 S.W.3d 267 (Mo. 2014): This case marked a significant shift in Missouri home rule law by imposing a substantial limitation on the scope of local authority. Prior to *Missouri Bankers Ass'n*, home rule cities could, for the most part, legislate in any area so long as their local laws were consistent with their charters and state law. However, that authority was narrowed by *Missouri Bankers Ass'n*. The Missouri Supreme Court considered a St. Louis County ordinance which implemented a foreclosure mediation program. The court held that the ordinance was invalid because the County had exceeded its charter authority in passing it. The court noted that "the power of the municipality to legislate shall be confined to municipal affairs" and "its actions 'must be in harmony with the general law where it

touches upon matters of state policy.'" *Id*. at 272–73. While the County enacted the ordinance "to address 'the national residential property foreclosure crisis' and its impacts on the County," the court concluded that this was not "a matter of such distinctly local concern" that it would fall within the scope of home rule authority. *Id.* at 273.

- *Coop. Home Care, Inc. v. City of St. Louis*, 514 S.W.3d 571 (Mo. 2017): This opinion provides standards for express preemption and implied conflict and field preemption in Missouri. In this case, the Missouri Supreme Court upheld a St. Louis ordinance that gradually increased the minimum wage. The ordinance was challenged on the grounds that (1) it was preempted by the state's minimum wage law, and that (2) it exceeded the city's charter authority, among other arguments. On preemption, the court did not find conflict preemption because the "local law simply supplement[ed] state law, . . . prohibit[ing] more than the state prohibits." *Id.* at 583. It also found no field preemption because "the provisions of the minimum wage law alone do not indicate an intent to preempt" the field. *Id.* at 584. The court also ruled that, despite the state's interest in worker welfare, cities have home rule authority "to enact ordinances having a substantial and rational relation to the 'peace, comfort, safety, health, morality, and general welfare' of its inhabitants." *Id.* at 586–87. The opinion also offers an important clarification about Mo. Rev. Stat. § 71.010, which provides that a local government must "confine and restrict its jurisdiction and the passage of its ordinances to and in conformity with the state law upon the same subject." *Coop. Home Care* confirmed that section 71.010 should not be interpreted to mean that supplemental city and county regulations necessarily conflict with state law on the same subject. *Id*.

- *City of Aurora v. Spectra Commc'ns. Grp.*, 592 S.W.3d 764 (Mo. 2019): This case discusses the test for the validity of "special laws" passed by the state General Assembly under article III, section 40(30) of the state constitution. As a general matter, the Missouri Constitution prohibits the General Assembly from passing special laws that apply in only one city. Mo. Const. art. III, §§ 40–42. This is consistent with home rule principles because special laws tend to infringe upon local authority over purely local matters. However, special laws are allowable in Missouri in certain circumstances. Here, the court considered a challenge to a law limiting the payments that municipalities can receive from public utilities using their right-of way on the grounds that it is an invalid special law because it has a "grandfather" provision that applies to only certain municipalities. *Id*. at 781. In this case, the court diverged from its previous "substantial justification" test used in special law cases, *see City of DeSoto v. Nixon*, 476 S.W.3d 282, 287 (Mo. 2016), and returned to its original "rational basis" test, lowering the burden on the state. *Id.* at 781. The court held that the special law here satisfied the rational basis test because the "provision balances the reasonable reliance of those political subdivisions that chose this method of raising revenue when doing so was perfectly lawful with the legislature's desire to implement a policy imposing such fees as a revenue generating devise for political subdivisions." *Id*. at 782. Therefore, the special law was constitutionally valid.

- *Zang v. City of St. Charles*, 659 S.W.3d 327 (Mo. 2023): This case reaffirms many of the preemption principles that existed in the case law prior to *Missouri Bankers Ass'n* and Mo. Rev. Stat. § 71.010. The case involved

a City of St. Charles ordinance that creates notice requirements relating to accidents that occur due to city negligence. *Id*. at 330. The plaintiff claimed the ordinance was preempted by two sections of state law: section 537.600.1(2), which waives sovereign immunity from suits for injuries caused by the condition of public property, and section 82.210 which limits that waiver in cities with more than 100,000 people by requiring that the city had been given notice of the dangerous condition. *Id.* at 332–32. The City of St. Charles had fewer than 100,000 residents so section 82.210 did not directly apply to it. The Missouri Supreme Court held that the two sections of state law do not preempt the City's ordinance. First, state and local laws do not conflict merely when local laws require something that state law does not. *Id.* at 332. Second, the state law provisions "do not evince a legislative intent to occupy the field and prevent constitutional charter cities with populations of less than 100,000 inhabitants from creating notice requirements." *Id.* at 334.

5. BUILDING CODES

Unlike most states in the United States, Missouri does not have a statewide building code. Instead, Missouri municipalities may, but are not required to, adopt building codes:

Mo. Rev. Stat. § 67.280: Any municipality with the authority to adopt ordinances "may adopt or repeal an ordinance which incorporates by reference the provisions of any code or portions of any code," including building codes, plumbing, mechanical, and electrical codes, and fire prevention codes.

Municipalities are allowed to adopt any building code "prepared by various technical trade associations, federal agencies, [or] this state or any agency thereof." Mo. Rev. Stat. § 67.280. Another section of Missouri law requires counties to adopt a "nationally recognized building code" from 1999 or any later edition. Mo. Rev. Stat. § 64.196. A number of Missouri cities and counties have adopted various editions of the International Code Council's (ICC) model codes.[22] For example, St. Louis, Kansas City, and Columbia have adopted the 2018 editions of the ICC model codes.

Although Missouri law currently allows for broad local authority over building codes, the "Missouri Building Codes Act" was introduced in the Missouri legislature in 2024. H.B. 2870, 102d Gen. Assemb., 2d Sess. (Mo. 2024). This bill would have repealed section 67.280, which authorizes municipalities to adopt building codes. In its place, the bill would have established statewide "Missouri Building Codes" comprised of model codes from three organizations, including the ICC. The bill provided that local amendments to the Missouri Building Codes "shall be approved by a building code committee." H.B. 2870 § 8. The bill was introduced in February 2024 but

[22] *County Building Codes for Missouri*, MO. DATA PORTAL (Aug. 11, 2021), https://data.mo.gov/Economic-Development/County-Building-Codes-for-Missouri/iq7s-izvt/about_data.

failed to advance out of committee.[23] A similar bill, S.B. 743, was re-introduced in the 2025 session but also died in committee.[24]

6. ELECTRIC UTILITY CONSIDERATIONS

What is the relevant utility regulatory body in the state? Who and what does it regulate? The state Public Service Commission has broad regulatory authority over investor-owned electric and natural gas utilities and has limited jurisdiction to regulate safety of public utilities, including municipally-owned utilities. Mo. Rev. Stat. §§ 386.250, 386.310. Beyond safety regulation, "[m]unicipal corporations that operate public utilities are not subject to the rate making process of the Public Service Commission." *Shepard v. Wentzville*, 645 S.W.2d 130, 133 (Mo. Ct. App. 1982).

What authority, if any, do municipalities have over utilities? Missouri has not granted cities general authority to regulate investor-owned utilities because that authority is vested in the Public Service Commission. However, cities can still have a role in regulating those utilities, as described in more detail below, through zoning decisions, franchise agreements, and regulation of the public right-of-way within city limits.

Missouri state law also authorizes cities to own and operate gas and power plants. Mo. Rev. Stat. § 91.010. They can also sell power to other municipalities. Mo. Rev. Stat. § 91.020. If a city does not supply power through a municipally-owned utility, it may buy gas and electricity from any other city or lawful supplier under a contract that the parties negotiate with approval by the city's governing council. Mo. Rev. Stat. §§ 71.530, 91.030.

Cities "may by ordinance authorize" any power utility "to set and maintain [infrastructure] for the operation and maintenance" of its plant on municipally-owned property "for a period of twenty years or less, subject to such rules, regulations and conditions as shall be expressed in such ordinance." Mo. Rev. Stat. § 71.520. Cities can also regulate public utilities' use of the public right-of-way by imposing requirements related to insurance, permitting, removal of abandoned equipment, and more. Mo. Rev. Stat. § 67.1830.

Can cities enter into franchise agreements with utilities? Yes, cities may enter franchise agreements with utilities. *See, e.g.*, Mo. Rev. Stat. § 393.299.

Does case law address whether the state public service law preempts local authority over utilities? In *StopAquila.Org v. Aquila*, the court held that state public utilities law does not preempt local zoning law. The issue arose when a company received approval from the Public Service Commission to construct and operate an electric power plant but was prevented from doing so by local zoning law. 180 S.W.3d 24, 26–27 (Mo. Ct. App. 2005). The court held that although the Public Service Commission has "exclusive authority to regulate public utilities," the Commission does not have authority over local zoning matters, and municipalities are not

[23] Missouri Building Codes Act, H.B. 2870, 102d Gen. Assemb., 2d Sess. (2024), https://legiscan.com/MO/bill/HB2870/2024.
[24] Missouri Building Codes Act, S.B. 743, 103d Gen. Assemb., 1d Sess. (2025), https://legiscan.com/MO/bill/SB743/2025.

preempted from enacting zoning laws that determine the location of public utilities, even if those utilities have received approvals from the Commission. *Id.* at 29–30.

How can cities intervene in Public Service Commission proceedings? Political subdivisions may intervene in Public Service Commission proceedings. *See* *State ex rel. County of Jackson v. Missouri Pub. Serv. Comm'n*, 985 S.W.2d 400, 401 (Mo. Ct. App. 1999). The Public Service Commission provides procedures for intervention at Mo. Code Regs. tit. 20, § 4240-2.075. Interested parties must submit a motion to intervene within 30 days of the commission giving notice of the case. The commission can grant the motion if the proposed intervenors have "an interest which is different from that of the general public and which may be adversely affected by a final order" or if the intervention would serve the public interest.

Does the state have an obligation to serve statute? Yes, Missouri law provides that, "[e]very gas corporation, every electrical corporation, every water corporation, and every sewer corporation shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable." Mo. Rev. Stat. § 393.130.

Has the state passed enabling legislation for community choice aggregation (CCA)? No, Missouri does not have legislation enabling community choice aggregation.

7. SECONDARY SOURCES

Paul Diller, *Missouri* (2017), https://perma.cc/44LA-C7MH (offering a short summary of the state's constitutional and statutory home rule provisions and preemption case law).

James E. Westbrook, *Municipal Home Rule: An Evaluation of the Missouri Experience*, 33 Mo. L. Rev. 45 (1968), https://perma.cc/T85W-6P6R (providing historical context for Missouri's home rule authority).

8. MISCELLANEOUS

There have been anti-ESG initiatives in Missouri:

- In 2023, Missouri's General Assembly passed House Resolution No. 12. The resolution "urge[s] state officials to use all tools at their disposal . . . to oppose forthcoming SEC regulations," requiring climate change risk and environmental, social, and corporate governance (ESG) disclosures.

- The Missouri Secretary of State also issued two rules in 2023 to constrain consideration of ESG factors in investing. The rules required broker-dealers, agents, and advisors to (1) disclose to customers when they were considering a "social objective" or other "nonfinancial objective" when making an investment decision or providing advice, and (2) obtain written consent from those customers. Mo. Code Regs. tit. 15 §§ 30-51.170, 30-51.172. However, both rules were struck down as unconstitutional and preempted by federal

law by the United States District Court for the Western District of Missouri in August 2024. *Sec. Indus. & Fin. Markets Ass'n v. Ashcroft*, No. 23-cv-4154 (W.D. Mo. Aug. 14, 2024).

Missouri's General Assembly recently considered a bill that would have amended state eminent domain law to exclude the use of eminent domain for wind and solar projects: Public utilities' power "to condemn property shall not extend to: (1) The construction or erection of any plant, tower, panel, or facility that utilizes, captures, or converts wind or air currents to generate or manufacture electricity; or (2) The construction or erection of any plant, tower, panel, or facility that utilizes, captures, or converts the light or heat generated by the sun to generate or manufacture electricity." H.B. 1750, 102d Gen. Assemb., 2d Sess. (Mo. 2024). The bill passed the House but did not advance out of the Senate.