

NAVIGATING STATE LAW IN LOCAL CLIMATE ACTION NEW YORK



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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 New York. 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)).

NEW YORK

1. DELEGATION OF HOME RULE AUTHORITY AND POLICE POWER

New York has a relatively broad home rule system. Under both the state constitution and state statute, municipalities have extensive legislative powers to enact local laws related to local affairs. Local autonomy to enact ordinances is limited, however, by two forms of preemption and the “state concern” doctrine, which is discussed further below.

1.1 Constitutional Provisions

[N.Y. Const. art. IX, § 2\(c\)](#): Every local government in New York has the power to “adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to [10 specified subjects], whether or not they relate to the property, affairs or government of such local government.” Those subjects include the “transaction of its business,” the “acquisition, care, management and use of its highways, roads, streets, avenues and property,” and the “government, protection, order, conduct, safety, health and well-being of persons or property therein.”

1.2 Statutory Provisions

[N.Y. Mun. Home Rule Law § 10](#): New York’s General Assembly also memorialized municipal home rule authority in statute, providing a grant of power similar to the state constitution. Specifically, “every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government[.]” This grant of power extends to cities, counties, towns, and villages.

2. HOME RULE CHARTERS

Under [N.Y. Mun. Home Rule Law § 10\(ii\)\(c\)\(1\)](#), a city may “revise its charter or adopt a new charter by local law adopted by its legislative body pursuant to the provisions of this chapter and subject to the procedure prescribed by this chapter or by local law adopted pursuant to article four of this chapter” (cleaned up).

New York currently has sixty-two cities, and each of them has a unique charter.²⁰ Albany and New York City have charters that predate the statehood of New York, while the other sixty cities were chartered by the state legislature, including [Binghamton](#), [Buffalo](#), and [Rochester](#).²¹ There is no minimum population size or geographic area requirement for a community to incorporate as a city.²² Some of the state’s cities have populations smaller than the population of the largest New York village (e.g., Hempstead Village has a population over 58,000 while the city of Ithaca has a population around 30,000).

²⁰ See *City Government*, NEW YORK STATE, <https://perma.cc/3V24-3H43>.

²¹ *Id.*

²² *Id.*

While cities have authority to revise their charters, they must do so in a manner consistent with the state constitution and the statutory grant of power to cities. See [N.Y. Const. art. IX, § 2\(c\)](#); [N.Y. Mun. Home Rule Law § 10\(1\)\(i\), \(ii\)](#).

3. PREEMPTION OF LOCAL LAW

New York courts recognize two forms of preemption: first, when a local government legislates in a field for which the state has adopted a comprehensive regulatory scheme; and second, when a local government adopts a law that directly conflicts with a state statute.²³

3.1 Field Preemption

Field preemption occurs when state statutes expressly or impliedly occupy an entire legislative field, leaving no room for local regulation. See [DJL Rest. Corp. v. City of New York](#), 96 N.Y.2d 91, 95 (2001) (“An implied intent to preempt may be found in a ‘declaration of State policy by the State Legislature or from the fact that the Legislature has enacted a comprehensive and detailed regulatory scheme in a particular area.’”). Still, the enforcement of local laws of general application that only incidentally infringe on a preempted field will not be preempted. See [Patrolmen’s Benev. Ass’n of City of New York v. City of New York](#), 35 N.Y.S.3d 314, 318 (N.Y. App. Div. 2016). For example, in [Grimm v. City of New York](#), the court determined that a state law addressing certain firearm possession did not do so “so extensively with the subject of the control of such weapons as to evidence any design or intention by the State to preempt the entire field.” 289 N.Y.S.2d 358, 363 (N.Y. Sup. Ct. Queens Co. 1968).

3.2 Conflict Preemption

Conflict preemption “occurs when a local law prohibits what a State Law explicitly allows, or when a State Law prohibits what a local law explicitly allow.” [Matter of Chwick v Mulvey](#), 915 N.Y.S.2d 578, 584 (N.Y. App. Div. 2010). A court’s conflict analysis compares the language of the local ordinance and state statute, and also whether the “direct consequences of a local ordinance ‘render[s] illegal what is specifically allowed by State law.’” *Id.* In [Matter of Chwick](#), a local ordinance prohibited the possession of “deceptively colored” firearms. *Id.* However, state law did not prohibit the possession of deceptively colored firearms as defined by the ordinance. Thus, such possession was implicitly permitted under state law, and the local prohibition directly conflicted with state law.

²³ See *Report and Recommendations Concerning Constitutional Home Rule*, NEW YORK STATE BAR ASS’N. (2016), <https://perma.cc/8K4K-J8KM>.

3.3 State Laws with Potential for Local Climate Preemption

New York State has enacted limited state laws that preempt local control over issues connected to climate change. It has enacted one major preemption law that functions to support renewable energy development.

Plastic Bags. In 2017, as a response to New York City’s 2016 plastic bag fee, then-Governor Andrew Cuomo signed a law that preempted the city’s bag fee law a day before it was set to go into effect.²⁴ In 2019, however, the New York Legislature passed the [Bag Waste Reduction Law](#) as part of the 2019–2020 state budget. The law prohibits many businesses from distributing film plastic bags to customers.

Renewable Energy Siting. In 2020, the New York Legislature created the Office of Renewable Energy Siting (ORES) with exclusive jurisdiction over the siting of all “major renewable energy facilities.” See [19 N.Y.C.R.R. § 1100-1.1 et seq.](#) All large-scale, renewable energy projects 25 megawatts (MW) or larger²⁵ are required to obtain a siting permit from ORES for new construction or expansion, while new projects sized between 20 and 25 MW can elect to apply for a siting permit from ORES or go through a local permitting process.²⁶ In 2024, through the enactment of the [RAPID Act](#), ORES’s jurisdiction was expanded to cover major electric transmission facilities as well. See [19 N.Y.C.R.R. § 1100-1.2\(ag\)](#). While applicants are required to consult with local governments about any relevant local laws as part of the permit process, ORES can issue a single permit covering state and local law requirements. To that end, ORES “may elect to not apply, in whole or in part, any local law or ordinance which would otherwise be applicable if it makes a finding that as applied to the proposed facility, it is unreasonably burdensome in view of the [state’s climate goals] and environmental benefits of the proposed facility[.]” [16 N.Y.C.R.R. § 1100-2.25\(c\)](#).

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

Determining what is properly the domain of local governments and what the state can legislate has been a recurring issue in New York courts. See, e.g., [City of New York v. Patrolmen’s Benev. Ass’n of City of New York](#), 89 N.Y.2d 380 (1996). While courts have recognized that constitutional home rule limits the state legislature from intruding upon matters of local concern, if the law’s subject is “in a substantial degree a matter of State concern, the Legislature may act” despite the legislation’s impact on local concerns. [Patrolmen’s Benev. Ass’n](#), 89 N.Y.2d at 391. In addition to preemption where a local law conflicts with a state statute, local governments may not act where the state has acted comprehensively in the same area (i.e., field preemption). See [Albany Area Builders Ass’n v. Town of Guilderland](#), 74 N.Y.2d 372 (1989) (noting that the legislature need not explicitly express its intent to preempt local action).

²⁴ See Eric A. Goldstein, *State Wrecks NYC’s Plastic Bag Fee Law & Bashes Home Rule*, NATURAL RES. DEF. COUNCIL (Feb. 17, 2017), <https://perma.cc/3KP8-NW6F>.

²⁵ See 16 N.Y.C.R.R. § 1100-1.2(ag).

²⁶ *Id.* § 1100-1.2(ba).

The judicially created “statewide concern doctrine” limits local governments from legislating on a matter that is to a substantial degree a matter of state interest. Courts have determined that the state has an overriding interest in matters such as “taxation, incurring of indebtedness, education, water supply, transportation and highways, health, social services, aspects of civil service and banking.”²⁷ The test for determining whether a matter is a statewide concern gives courts a fair amount of discretion and can be interpreted quite broadly. *Empire State Chapter of Associated Builders & Contractors v. Smith*, 970 N.Y.S.2d 724, 727–28 (N.Y. 2013). Where legislation relates to both “the property, affairs or government of a local government” and to matters other than those three subjects (i.e., the matter of substantial state concern), the state can act through special law to regulate only certain local governments. *See, e.g., id.* (holding that New York’s home rule provisions did not prevent the state from amending the Wicks Law to impose “apprenticeship requirements” on certain local public contracts, even though the amendments did not apply uniformly throughout the state). The broad scope of the statewide concern doctrine has led to scholarship asserting that the “the line between matters of State concern and matters of local concern is increasingly indistinct.”²⁸

The cases below illustrate the reach of municipal authority and how New York courts balance municipal authority against the state’s power to preempt local ordinances and override municipal home rule through the “state concern” doctrine.

- *Wallach v. Town of Dryden*, 23 N.Y.3d 728 (2014): Considering two appeals, the New York Court of Appeals addressed the question of whether “towns may ban oil and gas production activities, including hydrofracking, within municipal boundaries through the adoption of local zoning laws.” *Id.* at 739. In response to the natural gas industry’s interest in fracking, the towns of Dryden and Middlefield both passed bans on certain oil and gas production activities, including hydrofracking. *Id.* at 739–41. The plaintiffs, each a corporation that had executed leases with landowners to explore hydrofracking in the towns, argued that the towns’ ordinances were expressly preempted by a supersession clause in New York’s Oil, Gas and Solution Mining Law (OGSML). *Id.* at 742. In determining whether the OGSML’s supersession provision preempted the towns’ ordinances, the court relied on the analytical framework set out in *In re Frew Run Gravel Prods. v. Town of Carroll*, 71 N.Y.2d 126 (1987), which considers three factors in turn: “(1) the plain language of the supersession clause; (2) the statutory scheme as a whole; and (3) the relevant legislative history.” *Id.* at 744. Noting that “the discrete issue before [the court]” was the relationship between the State and its local government subdivisions, the court held that the OGSML’s plain language, its framework, and legislative background, did not “evinced[] a clear expression of preemptive intent,” thus upholding the towns’ zoning laws. *Id.* at 754–55.

²⁷ *Local Government Home Rule Power*, NEW YORK DEP’T OF STATE, <https://perma.cc/79VZ-KSLA>.

²⁸ Alexa L. Archambault, *Green Energy v. The Constitution: New York State’s Battle with Home Rule Provisions in the Age of Environmentalism*, 69 BUFF. L. REV. 873, 899 (2021) (quoting *Report and Recommendations Concerning Constitutional Home Rule*, *supra* note 23, at 1–2).

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- [*DJL Rest. Corp. v. City of New York*](#), 96 N.Y.2d 91 (2001): At issue in this case was a 1995 New York City zoning amendment to regulate the location of adult establishments, confining them to manufacturing and high-density commercial zoning districts. Plaintiffs challenged the amended zoning resolution, contending that it conflicted with and therefore was preempted by the state’s Alcoholic Beverage Control (ABC) Law. *Id.* at 93. It was well settled that the ABC Law preempts its field because the law regulates virtually all aspects of the sale and distribution of liquor. *Id.* at 95. In its analysis, however, the court acknowledged that the Municipal Home Rule Law gives municipalities the power to enact local laws for the “protection and enhancement of its physical and visual environment” and for the “government, protection, order, conduct, safety, health and well-being of persons or property therein.” *Id.* at 94. So long as a city adopts zoning regulations that are consistent with the state constitution and state statutes, their authority to do so is broad. *Id.* The court held that the City’s zoning amendment was valid, determining that the overlapping requirements of the amended zoning resolution with the ABC Law was “merely incidental” to the ABC Law’s implied preemption of the field because the resolution and law were directed at distinct activities. *Id.* at 96. In other words, “[l]ocal laws of general application—which are aimed at legitimate concerns of a local government—will not be preempted if their enforcement only incidentally infringes on a preempted field.” *Id.* at 97.
 - [*Trustees of Union Coll. in Town of Schenectady in State of N.Y. v. Members of Schenectady City Council*](#), 91 N.Y.2d 161 (1997): The City of Schenectady adopted Ordinance No. 78-45, which established a residential zoning area in a historic district of the city. Certain uses, like educational institutions, could still apply for a special permit within the historic district. Later, the City adopted Schenectady City Code section 264-8, which excluded educational institutions, among other uses, from receiving special permits within the residential historic district. *Id.* at 164. Union College sued, alleging that section 264-8 was unconstitutional. In its discussion, the court stated that “with the police power as the predicate for the State’s delegation of municipal zoning authority, a zoning ordinance will be struck down if it bears no substantial relation to the police power objective of promoting the public health, safety, morals or general welfare.” *Id.* at 165. While municipal police power to enact zoning ordinances is “formidable,” it is not conclusive. *Id.* The court found that the zoning provision was overly broad, as it did not offer any process through which Union College could seek permission to use the land for educational purposes, making the exclusion unconstitutional. *Id.* at 166–67. Consequently, the court deemed that section 264-8 exceeded Schenectady’s authority because it “serve[d] no end . . . substantially related to the promotion of the public health, safety, morals or general welfare.” *Id.*
 - [*McDonald v. New York City Campaign Fin. Bd.*](#), 965 N.Y.S.2d 811 (N.Y. Sup. Ct. 2013), *aff’d as modified*, 985 N.Y.S.2d 557 (N.Y. App. Div. 2014): In this case, plaintiffs, a mayoral candidate and his committee, challenged New York City’s extension of contribution limits under the Campaign Finance Act (CFA) to non-publicly funded candidates. The plaintiffs alleged that the State Election Law, Article 14, established a “comprehensive and detailed regulatory scheme” that preempted the field of election contributions, including the City’s local contribution limits. *Id.* at 815. The court explained that local governments, under

the Municipal Home Rule Law, have broad authority to adopt laws relating to their “properties, affairs, or government,” and in particular to the “powers, duties, qualifications, number, mode of selection and removal [and] terms of office . . . of its officers and employees” so long as they are consistent with the state Constitution and statutes. *Id.* at 823. The court found that the state’s Election Law did not address contribution limits for non-publicly funded local candidates, so the City’s restrictions were not preempted. *Id.* at 825. The court also emphasized that local ordinances carry a strong presumption of constitutionality, and the City’s restrictions on campaign contributions were within its authority. *Id.*

4.1 Other Relevant Cases

[*Albany Area Builders Ass’n v. Town of Guilderland*](#), 74 N.Y.2d 372 (1989) (considering a local law imposing transportation impact fees and finding that the state “evidenced a purpose and design to preempt the subject of roadway funding and occupy the entire field, so as to prohibit additional local regulation.”).

[*Oil Heat Inst. of Long Island v. Town of Babylon*](#), 156 A.D.2d 352 (N.Y. App. Div. 1989) (state statute regulating petroleum bulk storage preempted local code).

[*People v. Torres*](#), 37 N.Y.3d 256 (2021) (city ordinance imposing a stricter penalty than state law did not amount to a conflict for preemption purposes).

4.2 Recent and Ongoing Litigation

In May 2025, the Court of Appeals ruled that New York’s climate law, the Climate Leadership and Community Protection Act of 2019 (CLCPA) does not preempt the field of regulating greenhouse gas emissions, and therefore does not preempt New York City’s Local Law 97 of 2019, which sets greenhouse gas limits for the City’s largest buildings. [*Glen Oaks Village Owners v. City of New York*](#), No. 42, 2025 N.Y. LEXIS 725 (N.Y. May 22, 2025).

In [*Town of Copake v. New York State Office of Renewable Energy Siting*](#), a New York intermediate court determined that the Office of Renewable Energy Siting’s (ORES) power to preempt local ordinances related to the siting of major renewable energy facilities is a general law that applies uniformly to all municipalities and reaffirmed that energy infrastructure siting is a matter of state concern. 216 A.D.3d 93 (N.Y. App. Div. 2023). This case upholds ORES’s discretionary authority to override local restrictions on major renewable energy facilities (25 MW or larger) when such a restriction is “unreasonably burdensome in view of the [CLCPA targets](#) and the environmental benefits” of the facility. [16 N.Y.C.R.R. § 1100-2.25\(c\)](#). In 2024, the Court of Appeals dismissed the plaintiffs’ request for appeal. [*Town of Copake v. New York State Off. of Renewable Energy Siting*](#), 41 N.Y.3d 990 (2024).

5. BUILDING CODES

New York State is required by statute to set minimum statewide fire prevention and building codes, that shall, among other things “provide reasonably uniform standards and requirements for construction and construction materials for public and private buildings, including factory manufactured homes, consonant with accepted standards of engineering and fire prevention practices[.]” [N.Y. Exec. Law § 377](#). In addition to the building code, pursuant to [article 11 of the Energy Law](#), the state must set the minimum energy conservation requirements for new buildings. New York’s Building Code Council, made up of seventeen gubernatorial-appointed members, is charged with periodically updating the Uniform Fire Prevention and Building Code and the State Energy Conservation Construction Code. New York’s current [building and energy codes](#) are amended versions of the latest edition of the International Building Code (IBC) and International Energy Conservation Code (IECC), respectively, which are published International Code Council (ICC).

Under [N.Y. Exec. Law § 379](#), local governments can enact or adopt local laws and ordinances that are more restrictive than the corresponding state codes, provided that the Code Council approves the more restrictive standards. Additionally, local governments can voluntarily adopt New York’s “[Stretch Code](#),” a more stringent supplement to the state energy code that, on average, “improves the State Energy Code’s efficacy by 10%[.]” In July 2025, the Building Code Council approved the implementation of the All Electric Buildings Act. See [19 N.Y.C.R.R. § 1240.6](#) (adopted July 25, 2025); [Senate Bill 2023-S4006C](#). Beginning in 2026, all newly constructed single-family residences and low-rise buildings will be required to install all electric appliances. *Id.* By 2029, the prohibition on fossil fuels will extend to nearly all new buildings. *Id.*

The state has promulgated regulations applicable to both the [Building Code](#) and the [Energy Code](#). The Secretary of State, through the New York Code, Rules and Regulations, provides rules and regulations for the administration and enforcement those state codes.

6. ELECTRIC UTILITY CONSIDERATIONS

What is the relevant utility regulatory body in the state? Who and what does it regulate? The [Public Service Commission](#) (PSC), is responsible for regulating the state’s utilities (electric, gas, steam, telecommunications, and water), setting rates, and ensuring adequate service for New Yorkers. See [N.Y. Pub. Serv. Law § 5](#). Under [N.Y. Pub. Serv. Law, § 66](#), the PSC has “general supervision of all gas corporations and electric corporations having authority under any general or special law or under any charter or franchise to lay down, erect or maintain wires, pipes, conduits, ducts or other fixtures in, over or under the streets, highways and public places of any municipality for the purpose of furnishing or distributing gas or of furnishing or transmitting electricity for light, heat or power, or maintaining underground conduits or ducts for electrical conductors, and all gas plants and electric plants owned, leased or operated by any gas corporation or electric corporation.” Municipally owned electric utilities are generally subject to Article 4 of the Public Service Law, which regulates electric and gas service. [N.Y. Gen. Mun. Law § 364\(1\)](#).

What authority, if any, do municipalities have over utilities? New York has not granted local governments general authority over electric utilities. State law has delegated the PSC jurisdiction over electric utilities, including setting rates and ensuring adequate service. However, municipalities do have options to exercise authority over electricity service and utilities. A municipality may own and operate any public utility service “within or without its territorial limits.” [N.Y. Gen. Mun. Law § 360\(2\)](#). Cities can also contract to purchase gas or electrical energy. *Id.* Municipalities can also exercise some control over utilities through franchise agreements and community-choice aggregation programs.

Can cities enter into franchise agreements with utilities? Cities are empowered “[t]o grant franchises or rights to use the streets, waters, water front, public ways and public places of the city,” [N.Y. Gen. City Law § 20\(10\)](#), and every local government has the power to adopt and amend local laws related to “the acquisition, care, management and use of its highways, roads, streets, avenues and property,” [N.Y. Gen. Home Rule Law § 10\(1\)\(2\)\(a\)\(6\)](#).

How can cities intervene in Public Service Commission proceedings? Under [16 N.Y.C.R.R. § 4.3](#), “[a]ny person may ask the presiding officer for permission to intervene. Permission will be granted if the intervention is likely to contribute to the development of a complete record or is otherwise fair and in the public interest.” Permission to intervene can be sought at any time, unless the “presiding officer determines that granting such permission would be unfairly prejudicial to other parties.” [16 N.Y.C.R.R. § 4.3\(c\)\(2\)](#).

Does the state have an obligation to serve statute? Utilities are subject to a duty to serve: “Every gas corporation, every electric corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.” [N.Y. Pub. Serv. Law § 65\(1\)](#).

Has the state passed enabling legislation for community choice aggregation (CCA)? Yes. In 2016, the New York PSC issued an [Order](#) authorizing community choice aggregation opt-out programs and establishing the framework and required standards that municipalities must adhere to during development and implementation of their CCA programs. New York’s policy allows local governments to procure energy supply service and distributed energy resources on behalf of community customers. The PSC has previously authorized at least four entities to administer CCA programs in New York: Sustainable Westchester, Good Energy, L.P., Joule Assets, Inc., and Municipal Electric and Gas Alliance, Inc.²⁹ For example, Sustainable Westchester created Westchester Power, which on behalf of its members operated a “bulk energy purchasing program designed to control costs and increase the use of renewable energy in Westchester County.”³⁰ Sustainable Westchester discontinued its program at the end of November 2025. According to the DPS, Good Energy, L.P., is the only active CCA administrator.

²⁹ See *Community Choice Aggregation*, NEW YORK STATE DEP’T OF PUB. SERV., <https://perma.cc/J9LC-TMP8>.

³⁰ *Westchester Power*, SUSTAINABLE WESTCHESTER, <https://perma.cc/S4NM-HUEQ>. In 2025, Sustainable Westchester discontinued its program.

7. SECONDARY SOURCES

Roderick M. Hills, Jr., *Hydrofracking and Home Rule: Defending and Defining an Anti-Preemption Canon of Statutory Construction in New York*, 77 ALBANY L. REV. 2 (2014), <https://perma.cc/99W5-YJD7> (arguing that the home rule powers of municipalities requires courts to “observe a presumption against preemption” and considering when that presumption may be rebutted).

Richard Briffault, *Local Government and the New York State Constitution*, 1 HOFSTRA L. & POL’Y SYMP. 7 (1996), <https://perma.cc/97E8-V3H2> (examining the “place of local governments and state-local relations in the New York Constitution.”).

8. MISCELLANEOUS

New York does not allow for citizen-initiated ballot measures that would uphold, repeal, or amend a state statute or the state constitution. Constitutional amendments must be proposed in the New York State Legislature and must be approved by the people of New York. See [N.Y. Const. art. XIX, §1](#).

Pursuant to [article VII, section 11 of the New York Constitution](#), certain bond issues must go before the voters.