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NAVIGATING STATE LAW IN LOCAL CLIMATE ACTION

TEXAS

JANUARY 2026

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The Sabin Center for Climate Change Law develops legal techniques to fight climate change and promote climate justice, trains law students and lawyers in their use, and provides the legal profession and the public with up-to-date resources on key topics in climate law and regulation. It works closely with the scientists at Columbia University's Climate School and with a wide range of governmental, non-governmental and academic organizations.

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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 Texas. 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)).

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1. DELEGATION OF HOME RULE AUTHORITY AND POLICE POWER

1.1 Constitutional Provisions

Texas's Constitution allows any city with a population greater than five thousand to adopt a home rule charter. Tex. Const. art. XI § 5. The constitution further provides that "no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State . . ." Tex. Const. art. XI § 5(a).

Tex. Const. art. XI § 13(a): "Notwithstanding any other provision of this constitution, the legislature may by law define for all purposes those functions of a municipality that are to be considered governmental and those that are proprietary, including reclassifying a function's classification assigned under prior statute or common law."

1.2 Statutory Provisions

Although Texas's constitution theoretically allows cities to adopt a home rule charter that grants significant local authority, the legislature has sharply limited that authority—particularly in recent years. The Local Government Code provides generally that any municipality "may adopt, publish, amend, or repeal an ordinance, rule, or police regulation that: (1) is for the good government, peace, or order of the municipality or for the trade and commerce of the municipality; and (2) is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality." Tex. Loc. Gov't Code § 51.001. But a 2023 law—the Texas Regulatory Consistency Act ("TRCA" and called, by opponents, the "Death Star"[20] bill)—added the following language to the same code chapter: "Notwithstanding Section 51.001, the governing body of a municipality may adopt, enforce, or maintain an ordinance or rule only if the ordinance or rule is consistent with the laws of this state." *Id*. § 51.002. The same law also preempts city and county regulation of "conduct in a field of regulation that is occupied by a provision" of the state's Agriculture, Business & Commerce, Finance, Insurance, Labor, Natural Resources, Occupations, and Property Codes. Tex. H.B. No. 2127 §§ 5–15 (2023). Moreover, under a separate provision of state law, the state maintains exclusive jurisdiction over regulations of greenhouse gas emissions. Tex. Health & Safety Code § 382.005(b–c).

The Local Government Code contains separate sections describing more expansive home rule authority for each of the types of Texas municipalities, but it is not clear how courts will reconcile the apparent conflicts between those and the new section 51.002. *See, e.g.*, *id.* § 51.012 ("[A type-A] municipality may adopt an ordinance, act, law, or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the municipality as a body politic."); *id.*§ 51.032 ("The governing body of [a type-B] municipality may adopt an ordinance or bylaw, not inconsistent with state law, that the governing body considers proper for the government of the municipal corporation . . . [and] may take any other action necessary to carry out a

[20] Andrew Schneider, *"Death Star Law" Takes Effect on Schedule, Following the State's Appeal of a Lower Court Ruling*, TEX. PUB. RADIO (Sept. 3, 2023), https://perma.cc/3WWS-8YPS.

provision of this code applicable to the municipality."); *id.* § 51.072 ("[A home-rule] municipality has full power of local self-government . . . [and the] grant of powers to the municipality by this code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to local self-government.").

2. HOME RULE CHARTERS

A Texas city with a population greater than 5,000 can adopt a home rule charter under Article XI, § 5 of the Texas Constitution as long as the charter does not contain "any provision inconsistent with the Constitution of [Texas], or of the general laws enacted by the Legislature of this State." Courts interpreting this section have generally construed it as a broad grant of home rule powers to cities that operate under home rule charters:

> It was the purpose of the Home-Rule Amendment, art. XI, § 5, and the enabling statutes to bestow upon accepting cities and towns of more than 5000 population full power of self-government, that is, full authority to do anything the legislature could theretofore have authorized them to do. The result is that now it is necessary to look to the acts of the legislature not for grants of power to such cities but only for limitations on their powers.

Forwood v. City of Taylor, 214 S.W.2d 282, 286 (Tex. 1948) (internal citation omitted); *Burch v. City of San Antonio*, 518 S.W.2d 540, 543 (Tex. 1975) ("A city which operates under the Home Rule Amendment is empowered to adopt or amend its charter in any manner in which it may desire, consistent and in accordance with the state constitution and the general laws of this State.").

3. PREEMPTION OF LOCAL LAW

Texas courts will attempt to construe potentially conflicting state and local law in a way that allows both to remain in effect, *see* *Dallas Merch.'s & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 491 (Tex. 1993), but the state can still preempt a whole subject matter potentially available to legislate as long as the state expresses its intent to preempt that area with "unmistakable clarity." *See* *City of Floresville v. Nissen*, 654 S.W.3d 11, 14 (Tex. App. 2022).

3.1 Express Preemption

Express preemption occurs when the state includes explicit preemptive language in state statutes. For example, Tex. Health & Safety Code § 361.0961(a)(1): "A local government or other political subdivision may not adopt an ordinance, rule, or regulation to: prohibit or restrict, for solid waste management purposes, the sale or use of a container or package in a manner not authorized by state law."

3.2 Field Preemption

Texas courts have not explicitly recognized field preemption as a doctrine that operates within state law, but they have concluded that "the legislature may, by general law, withdraw a particular subject from a home rule city's domain." *Tyra v. City of Houston*, 822 S.W.2d 626, 628 (Tex. 1991). Relatedly, when the legislature has done so, a local government may only regulate if its action is "ancillary to and in harmony with the general scope and purpose of the state enactment." *City of Brookside Village v. Comeau*, 633 S.W.2d 790, 796 (Tex. 1982) ("The entry of the state into a field of legislation, however, does not automatically preempt that field from city regulation; local regulation, ancillary to and in harmony with the general scope and purpose of the state enactment, is acceptable.").

3.3 Conflict Preemption

Conflict preemption occurs when there is outright or actual conflict between state and local law. Texas courts asking whether state and local laws conflict assess whether a "reasonable construction leaving both in effect can be reached," and emphasize that "both will be enforced if that [is] possible." *City of Beaumont v. Fall*, 291 S.W. 202, 206 (Comm'n App. 1927). Courts concluding that only a portion of a state law is in conflict with state law may leave the remainder of the local law intact and enforceable. *See BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 8 (Tex. 2016) ("[An] Ordinance is preempted only to the extent that it is inconsistent with state law . . . [and] any provisions that are preempted do not affect the validity of the remaining portions of the Ordinance or any other ordinances.").

3.4 State Laws with Potential for Local Climate Preemption

In recent years, the Texas legislature has adopted a wide variety of laws preempting local control over issues connected to climate change. The Texas Regulatory Consistency Act is a recent example of a sweeping measure to take control away from local governments on a range of topics—all "conduct in a field of regulation that is occupied by a provision" of the state's Agriculture, Business & Commerce, Finance, Insurance, Labor, Natural Resources, Occupations, and Property Codes. The examples that follow include those preemption provisions in addition to several others:

Agriculture Law. Tex. Ag. Code § 1.004: "Unless expressly authorized by another statute, a municipality or county may not adopt, enforce, or maintain an ordinance, order, or rule regulating conduct in a field of regulation that is occupied by a provision of this code. An ordinance, order, or rule that violates this section is void, unenforceable, and inconsistent with this code."

Greenhouse Gas Emissions. Tex. Health & Safety Code § 382.005(b–c): "To the extent not preempted by federal law, the state has exclusive jurisdiction over the regulation of greenhouse gas emissions in this state. A municipality or other political subdivision may not enact or enforce an ordinance or other measure that directly regulates greenhouse gas emissions."

Climate Charters. Tex. Loc. Gov't Code § 9.0045: "A municipality may not hold an election for voter approval of a proposed climate charter unless the legislature adopts a resolution approving the proposed climate charter."

Building Electrification. Tex. Loc. Gov't Code § 247.002(a): "A political subdivision may not adopt or enforce an ordinance, order, regulation, or similar measure that limits access to or use of an energy source or that results in the effective prohibition of infrastructure that is necessary to provide access to a specific energy source, including a wholesaler, retailer, energy producer, or related infrastructure, including a retail service station."

Internal Combustion Engines. Tex. Loc. Gov't Code § 247.003(a): "A political subdivision may not adopt or enforce an ordinance, order, regulation, or similar measure that directly prohibits or restricts the use, sale, or lease of an engine based on its fuel source."

Natural Resources. Tex. Nat. Res. Code § 1.003: "Unless expressly authorized by another statute, a municipality or county may not adopt, enforce, or maintain an ordinance, order, or rule regulating conduct in a field of regulation that is occupied by a provision of this code. An ordinance, order, or rule that violates this section is void, unenforceable, and inconsistent with this code."

Oil & Gas Infrastructure Siting. Tex. Nat. Res. Code § 81.0523(b): "An oil and gas operation is subject to the exclusive jurisdiction of this state. Except as provided by [limited exceptions in this statutory section], a municipality or other political subdivision may not enact or enforce an ordinance or other measure, or an amendment or revision of an ordinance or other measure, that bans, limits, or otherwise regulates an oil and gas operation within the boundaries or extraterritorial jurisdiction of the municipality or political subdivision."

Carbon Dioxide Pipelines. Tex. Nat. Res. Code § 117.101(b): "Except as provided by [exemptions in this section] . . . a city may not adopt or enforce an ordinance that establishes safety standards or practices applicable to the pipeline transportation of hazardous liquids or carbon dioxide or hazardous liquid or carbon dioxide pipeline facilities that are subject to regulation by federal or state law."

Real Property. Tex. Prop. Code § 1.004(a): "Unless expressly authorized by another statute, a municipality or county may not adopt, enforce, or maintain an ordinance, order, or rule regulating conduct in a field of regulation that is occupied by a provision of this code. An ordinance, order, or rule that violates this section is void, unenforceable, and inconsistent with this code."

Oil & Gas Infrastructure. Tex. Util. Code § 121.202(a): "A municipality or a county may not adopt or enforce an ordinance that establishes a safety standard or practice applicable to a [natural gas] facility that is regulated under this subchapter, another state law, or a federal law."

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

The cases below provide examples of how courts historically analyzed preemption questions that arise under Texas law, but these cases predate the Texas Regulatory Consistency Act adopted in 2023. Future litigation is likely to be significantly shaped by the TRCA's provisions that preempt broad swaths of local authority.

Texas courts closely examine allegations that a local law conflicts with or is otherwise preempted by state law. They express some hesitation to interpret statutes in ways that create unavoidable conflicts—noting, for example, that "a city ordinance is presumed to be valid." *City of Brookside Village v. Comeau*, 633 S.W.2d 790, 792 (Tex. 1982). But the large number of clearly preemptive state laws means courts frequently invalidate conflicting ordinances. The cases below demonstrate how Texas courts balance the scope of municipal home rule authority with the state's power to limit local governments.

- *City of Laredo v. Laredo Merchants Association*, 550 S.W.3d 586 (Tex. 2018): In this case the Texas Supreme Court held that a Laredo ordinance banning single-use plastic shopping bags was preempted by state law. *Id*. at 598. The ordinance forbade "any commercial establishment to provide . . . checkout bags to customers." *Id.* at 589. The state law read that a "political subdivision may not . . . prohibit or restrict, for solid waste management purposes, the sale or use of a container or package in a manner not authorized by state law." *Id.* at 589 (quoting Tex. Health & Safety Code § 361.0961). The court concluded that by disallowing regulation "in a manner not authorized by state law" the legislature required even home rule cities to find an affirmative grant of authority to uphold their local ordinance—presented with none, the court held the state law preempted the ordinance. *Id.* at 598 ("By authorizing regulation only when municipalities are told how to permissibly regulate, the Act requires an express authorization.").

- *Dallas Merchants & Concessionaire's Association v. City of Dallas*, 852 S.W.2d 489 (Tex. 1993): This case concerned whether a local rule prohibiting alcohol sales within a certain distance of a residential zone was preempted by state law against ordinances that "impose stricter standards" on alcohol sellers than those imposed by the state itself. *Id*. at 489–90. The state law added that "[i]t is the intent of the legislature that this code shall exclusively govern the regulation of alcoholic beverages in this state." *Id.* at 491. The court concluded that because the legislature's intent to be the exclusive regulator of how alcohol could be sold in the state was clearly expressed, a local law adding requirements around where those sales could take place was preempted. *Id.* at 492.

- *BCCA Appeal Group v. City of Houston*, 496 SW. 3d 1, 19 (Tex. 2016): In this case a group representing refineries challenged a local ordinance requiring, among several other provisions, that facilities generating air pollution within Houston must register with the City. *Id*. at 19. Relevant state law gave the Texas Council on Environmental Quality (TCEQ) authority to authorize air emissions by granting permits to facilities to do so, and specifically provided that any ordinance enacted by a city concerning air pollution "may not make unlawful a condition or act approved or authorized" by state law or TCEQ rules. *Id.*; *see also* Tex. Health & Safety Code § 382.113(b). Finding that a facility could have a valid state-issued permit allowing it to operate

within the City's jurisdiction and yet that operating under that permit would be unlawful under local law if the facility had not registered with the City, the court concluded that the local ordinance was preempted by state law. *Id.* at 21.

4.1 Other Relevant Cases

EBS Sols., Inc. v. Hegar, 601 S.W.3d 744, 754 (Tex. 2020) ("[I]f a statute is susceptible to two interpretations—one constitutional and the other unconstitutional—then the constitutional interpretation will prevail.").

Texas Indus. Energy Consumers v. CenterPoint Energy Houston Elec., 324 S.W.3d 95, 103 (Tex. 2010) ("Absent an expression of intent regarding severability, the valid remaining portions of a statute remain enforceable if the invalidity of one portion 'does not affect other provisions or applications of the [rule] that can be given effect without the invalid provision or application.'").

City of Brookside Village v. Comeau, 633 S.W.2d 790, 792 (Tex. 1982) (finding regulating mobile home siting a valid exercise of police power and noting that an "ordinance is presumed to be valid . . . [and] . . . the courts have no authority to interfere unless the ordinance is unreasonable and arbitrary a clear abuse of municipal discretion.") (alteration in original).

Lower Colorado River Auth. v. City of San Marcos, 523 S.W.2d 641, 643 (Tex. 1975) ("[I]t is necessary to look to the acts of the legislature not for grants of power to [home rule] cities but only for limitations on their powers.").

City of Beaumont v. Fall, 116 Tex. 314, 322 (Comm'n App. 1927) ("It has never been the intention of the people of this state to permit one city to enforce a law which is contrary to a general law governing other cities of the same class.").

4.1 Recent and Ongoing Litigation

In 2023, Houston, San Antonio, and El Paso challenged the validity of HB 2127—titled the "Texas Regulatory Consistency Act" (TRCA) and nicknamed the "Death Star" bill by opponents pointing out that the Act vastly expands the state's preemption of local measures.[21] The cities won an initial victory in trial court arguing that the measure effectively nullified the home rule provisions in the Texas Constitution, but the state appealed.

On July 18, 2025 the appellate court reversed the trial court's decision, dismissing the plaintiff cities' case without prejudice after concluding that the cities lacked standing to sue. Among other reasons for dismissing the case, the court faulted the plaintiffs for failing to plead which specific local laws would be preempted by the TRCA—demonstrating to the court that the cities could not identify a concrete and particularized injury. The court further concluded that any injuries the cities did have were not traceable to the state as a defendant, since

[21] *See* Christian De Jesus Betancourt, *Texas Cities Are Getting Ready for the State's 'Death Star' Law*, NEXT CITY (Aug. 8, 2023), https://perma.cc/9XPK-F644.

the state had not threatened to sue the cities under the TRCA and the cities "made no allegation otherwise indicating that the State likely will sue." Opinion at 15. On September 17, 2025 the plaintiffs moved for rehearing.

By resolving the case on standing the court left the cities without clear guidance on whether the TRCA is in fact constitutional, but the cities are likely to exercise extreme caution when considering potentially preempted local laws, particularly as private party litigation gets underway. On October 29, 2025, a group of private plaintiffs sued Dallas under the TRCA, alleging that 83 of the city's ordinances are preempted by the state law. The action is seeking a declaratory judgment that the ordinances are invalid and to permanently enjoin Dallas from enforcing any of them. The case is *Kyles et al. v. City of Dallas*, No. 25-11423-467, in the 467th Judicial District Court of Denton County.

5. BUILDING CODES

State law in Texas mandates that municipalities adopt the International Residential Code, National Electric Code, and International Building Code. *See* Loc. Gov't Code §§ 214.212, .214, .216; *see also* SB 365 of 2001 § 3 (requiring municipalities to "establish rules and take other necessary actions" to implement the codes mandated by Texas law).[22]

Local governments may make amendments to the provisions of these codes provided only that they hold a public hearing on a proposed local amendment and adopt a local amendment by ordinance. *See, e.g.*, Tex. Local Gov't Code § 214.212(e). Amendments to these codes need not be more stringent than the statewide versions—a local government can enhance, diminish, or fully delete provisions of those codes as applicable within their jurisdiction.[23]

Texas has also adopted energy efficiency codes under the separate provisions of state law that codify the energy efficiency chapter of the international Residential Code (applicable to single-family construction) and the International Energy Conservation Code (applicable to all other construction) as statewide mandatory codes. Health & Safety Code § 388.003. Local amendments to these codes are permitted, but only in nonattainment areas (as established and defined by the U.S. Clean Air Act) and their surroundings (specific counties identified in Tex. Health & Safety Code § 386.001(2)), local amendments cannot be less stringent than the statewide codes. *Id.* § 388.003(e).

Despite the apparently broad authority of municipalities to adopt amendments to the Texas Building Codes and energy and energy efficiency codes, separate provisions of state law place limits on what cities can do in building codes. Cities may not pass rules or building code provisions that have the effect of banning natural gas in

[22] *See also* Tex. Att'y Gen. Op. No. JC-0453 (Jan. 28, 2002), https://perma.cc/Y9Y4-2VZ5 (". . . Senate Bill 365 requires municipalities to adopt the International Residential Code.").
[23] *See* Tex. Att'y Gen. Op. No. GA-0297 (Jan. 19, 2005), https://perma.cc/WE94-BPNU ("[S]ection 214.212's plain language does not limit the local amendments to the IRC authorized under that section to be only amendments that result in more stringent building standards.").

buildings. Tex. Util. Code § 181.903. Cities also may not restrict residential or small commercial consumers from installing solar equipment, though utilities can do so if they find restricting residential solar is necessary to support "reliability, power quality, or safety of the distribution system." Tex. Local Gov't Code § 229.101(b). And, under a bill specifically designed to give Texas residents flexibility to place solar canopies in the best position to generate power,[24] cities in Texas may not use building codes to limit where residents can place solar pergolas. Tex. Local Gov't Code § 214.221.

Cities also may not adopt rules that directly or indirectly limit the use of certain construction materials:

> (a) Notwithstanding any other law and except as provided by Subsection (d), a governmental entity may not adopt or enforce a rule, charter provision, ordinance, order, building code, or other regulation that:
>
> > (1) prohibits or limits, directly or indirectly, the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building if the building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building; or
> >
> > (2) establishes a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building if the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building.

Tex. Gov't Code § 3000.002.

6. ELECTRIC UTILITY CONSIDERATIONS

What is the relevant utility regulatory body in the state? Who and what does it regulate? The Public Utility Commission of Texas (PUCT) regulates the state's electricity markets and sets rates for utilities in the deregulated market. Alongside PUCT, the Electric Reliability Council of Texas (ERCOT) is an independent system operator charged with maintaining the overall flow of power across the state and maintaining generation. *See*

[24] Tex. S. Res. Ctr., 88th Legislature, Rep. on H.B. No. 3526 (April 28, 2023) ("Some jurisdictions require solar pergolas to be built within a certain distance of a home, or be attached to the home. This creates an issue where the building code can hinder the optimal positioning of a solar pergola for energy production. This bill creates an exception for solar pergolas from a municipal building code.").

16 Tex. Admin. Code § 25.361. Natural gas infrastructure throughout the state is regulated by the Railroad Commission of Texas.

What authority, if any, do municipalities have over utilities? By statute, municipalities have authority to own and operate utilities. Tex. Local Gov't Code § 552.001. Several operate municipal utilities, including for example San Antonio's CPS Energy and Austin Energy. Texas municipalities also can set rates and control operations and services of utilities within the municipality unless the municipality surrenders its authority to the PUCT. *Compare* Tex. Util. Code § 32.001 (establishing PUCT jurisdiction over utilities in areas outside a municipality and areas in which a municipality has surrendered its jurisdiction) *with* Tex. Util. Code § 103.001 ("[T]he governing body of a municipality has exclusive original jurisdiction over the rates, operations, and services of a gas utility within the municipality . . .") *and* Tex. Util. Code § 33.001 ("[T]he governing body of a municipality has exclusive original jurisdiction over the rates, operations, and services of an electric utility in areas in the municipality . . ."). Parties to a municipal ratemaking proceeding can appeal the city's decision to the PUCT. Tex. Util. Code. § 33.051 (articulating one of several pathways through which municipal ratemaking can be appealed to the PUCT).

Can cities enter into franchise agreements with utilities? Texas municipalities are empowered to enter into franchise agreements and to charge franchise fees on investor-owned utilities that operate in the municipality's right-of-way. Util. Code §§ 33.008, 39.456. Both gas and electric utilities are authorized to build infrastructure in city-owned rights of way but must do so "with the consent of and subject to the direction of the governing body of the municipality." *Compare* Tex. Util. Code. §§ 181.005, .022 *with* Tex. Util. Code §§ 181.006, .023.

Does case law address whether the state public service law preempts local authority over utilities? Case law addressing the interplay between state public service law and local authority is sparse, and there appear to be no controlling opinions parsing the two from the Texas Supreme Court. Texas courts of appeals have provided mixed answers to comparable questions. *Compare* *Gulf, C. & S. F. Ry. Co. v. White*, 281 S.W.2d 441, 448 (Tex. Civ. App. 1955) (allowing a railroad to build in contravention of local zoning rules because the railroad was operating with "power of eminent domain by delegation from the State of Texas"), *with* *Porter v. Sw. Pub. Serv. Co.*, 489 S.W.2d 361, 365 (Tex. Civ. App. 1972), *writ refused* NRE (Apr. 25, 1973) ("[A] city, in discharging the delegated police powers, does not usurp the [state's] eminent domain authority . . . by requiring it to meet certain [construction] standards.").

How can cities intervene in Public Utility Commission proceedings? PUCT regulations allow any party that has "a justiciable interest" in the outcome to intervene in a ratemaking proceeding. 16 Tex. Admin. Code § 22.103(b)(2).

Does the state have an obligation to serve statute? Yes, Texas utilities are subject to a duty to serve all customers under Tex. Util. Code § 38.001, providing that "[a]n electric utility and an electric cooperative shall furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable," and under Tex. Util. Code § 186.002, providing that "[a] public utility is dedicated to public service. The primary duty of a

public utility, including its management and employees, is to maintain continuous and adequate service at all times to protect the safety and health of the public against the danger inherent in the interruption of service."

Has the state passed enabling legislation for community choice aggregation (CCA)? No, Texas has not passed enabling legislation for community choice aggregation.[25]

7. SECONDARY SOURCES

TEXAS MUNICIPAL LEAGUE, ALPHABET SOUP: TYPES OF TEXAS CITIES (2017), https://perma.cc/S3W4-L9ZZ (explaining the specific characteristics of the types of municipalities categorized as "general law cities" under Texas law).

Michael B. Kent Jr., *Public Utilities, Eminent Domain, and Local Land Use Regulations: Has Texas Found the Proper Balance?*, 16 TEX. WESLEYAN LAW REV. 29 (2009), https://perma.cc/QEF3-39M9 (describing the statutory and case law history of Texas's approach to balancing public utility concerns with local control).

8. MISCELLANEOUS

Texas law grants standing to "any person"—broadly defined to include individuals, business entities, governments, and agencies of virtually all types—to sue a local government or a local government official for violations of several broad preemption statutes. *See* Tex. Civ. Prac. & Rem. Code § 102.A.001. A plaintiff in such an action may receive their costs and reasonable attorney's fees, and state law explicitly waives all types of governmental and qualified immunity as defenses to such an action. *Id.* at §§ 102A.002–.003.

Texas has passed several measures aimed at preventing state entities from investing in companies advancing environmental and social goals. These "anti-ESG" laws include:

- Chapter 809 of the Government Code, which directs state retirement funds to identify and potentially to divest from firms that boycott energy companies. *See* Tex. Gov't Code § 809.053(d) ("If . . . the financial company continues to boycott energy companies, the state governmental entity shall sell, redeem, divest, or withdraw all publicly traded securities of the financial company.").

- Similar legislation codified at Chapter 565 of the Insurance Code provides that "an insurer may not use an environmental, social, or governance model, score, factor, or standard to charge a rate different than the rate charged to another business or risk in the same class for essentially the same hazard." Tex. Insurance Code § 565.005.

[25] *Community Choice Aggregation*, U.S. ENV'T PROTECTION AGENCY, https://perma.cc/8GKA-3GWN.