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NAVIGATING STATE LAW IN LOCAL CLIMATE ACTION

OREGON

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Vincent M. Nolette, Daniel J. Metzger & Olivia N. Guarna

Columbia Law School, Sabin Center for Climate Change Law
Edited by Amy E. Turner

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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.

Sabin Center for Climate Change Law Columbia Law School
435 West 116th Street
New York, NY 10027
Tel: +1 (212) 854-3287
Email: columbiaclimate@gmail.com
Web: https://climate.law.columbia.edu/
Bluesky: @sabincenter.bsky.social
Blog: http://blogs.law.columbia.edu/climatechange

About the Authors: Vincent M. Nolette is the Equitable Cities Climate Law Fellow at Columbia Law School's Sabin Center for Climate Change Law. Daniel J. Metzger is a Senior Fellow for Smart Surfaces at the Sabin Center. Olivia N. Guarna is the Sabin Center's Climate Justice Fellow. Amy E. Turner is the Director of the Cities Climate Law Initiative at the Sabin Center for Climate Change Law. Part of their work supports the Sabin Center's Cities Climate Law Initiative, which provides resources to efficiently and effectively address legal questions confronting the urban climate transition.

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 Oregon. 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)).

OREGON

1. DELEGATION OF HOME RULE AUTHORITY AND POLICE POWER

Oregon's state constitution and statutes delegate broad home rule authority to cities to regulate matters of local concern. Although the constitution authorizes cities to adopt charters, home rule authority does not turn on whether a city has done so. Even in municipalities without a home rule charter, local governments have authority to adopt ordinances that fall within their police powers. All municipalities, regardless of whether or not they have a charter, may pass laws to govern their "local affairs."

1.1 Constitutional Provisions

The Oregon Constitution has two provisions which, taken together, form the basis of municipal home rule. Although neither use the term "home rule" nor address the concept head on, judicial interpretation of the two provisions dictates that the constitution delegates home rule authority to cities.[20] The provisions do so by (1) giving Oregon citizens the power to decide local matters by initiative and referendum[21] and (2) authorizing citizens, rather than the Legislative Assembly, to enact and alter city charters. Taken together, the "two amendments granted the authority for cities to incorporate, enact and amend their charters, and pass local laws."[22]

Or. Const. art. IV, § 1(5): "The initiative and referendum powers . . . are further reserved to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district. The manner of exercising those powers shall be provided by general laws, but cities may provide the manner of exercising those powers as to their municipal legislation. In a city, not more than 15 percent of the qualified voters may be required to propose legislation by the initiative, and not more than 10 percent of the qualified voters may be required to order a referendum on legislation."

Or. Const. art. XI, § 2: "The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon . . . but such municipality shall within its limits be subject to the provisions of the local option law of the State of Oregon."

The Oregon Constitution also delegates home rule authority to counties that adopt a county charter under article VI, section 10.

[20] *See, e.g.*, *La Grand v. Pub. Emps. Retirement Bd.*, 281 Or. 137, 140 (Or. 1978).
[21] "Initiative and referendum powers" refer to the powers of state citizens to directly initiate constitutional or statutory amendments without the involvement of the state legislature. Or. Const. art. IV. *See also* League of Oregon Cities, *FAQ on Initiatives and Referendums in Oregon* (2023), https://perma.cc/839J-YBAS (explaining initiatives and referendums in Oregon).
[22] LEAGUE OF OR. CITIES, HOME RULE 101 at 1 (2023), https://perma.cc/MY3R-HHQC.

Or. Const. art. VI, § 10: The Oregon Constitution authorizes home rule for counties when county voters, by election, "adopt, amend, revise or repeal a county charter. A county charter may provide for the exercise by the county of authority over matters of county concern."

1.2 Statutory Provisions

Cities that have not adopted a charter pursuant to Oregon Constitution article XI, section 2 can still exercise home rule authority based on an independent statutory delegation of authority. Cities have home rule authority for "the government of [their] local affairs." Courts have historically recognized municipal authority to pass ordinances related to "local affairs" pursuant to municipal police powers. *See, e.g.*, *Portland v. Yates*, 199 P. 184 (Or. 1921). Today, some describe police power a subset of home rule authority.[23]

Or. Rev. Stat. § 221.410(1): "Except as limited by express provision or necessary implication of general law, a city may take all action necessary or convenient for the government of its local affairs."

Or. Rev. Stat. § 221.210: "The city council may refer and the people may initiate municipal measures or amendments to the charter of a city . . ."

Like cities, counties that have not adopted a charter pursuant to Oregon Constitution article VI, section 10 also possess statutory-based home rule authority.

Or. Rev. Stat. § 203.035(1): "Subject to [limitations regarding ordinances that change the number or mode of selection for elective county officers], the governing body or the electors of a county may by ordinance exercise authority within the county over matters of county concern . . ."

Or. Rev. Stat. § 203.035(2): "The power granted by this section is in addition to other grants of power to counties, shall not be construed to limit or qualify any such grant and shall be liberally construed, to the end that counties have all powers over matters of county concern that it is possible for them to have under the Constitutions and laws of the United States and of this state."

2. HOME RULE CHARTERS

All 241 cities in Oregon have adopted charters, according to a 2024 report by the Oregon League of Cities.[24] City charters are not explicitly referred to as "home rule charters" in the Oregon Constitution but are considered to be in the case law.[25] In general, courts and the Attorney General tend to rely on case law from both the city and

[23] *See, e.g.*, Ass'n of Or. Counties, County Home Rule in Oregon at 46 (2005), https://perma.cc/CEK3-P87M.
[24] League of Or. Cities, Oregon Municipal Handbook: Chapter 1: Nature of Cities (updated 2024), https://perma.cc/FGL8-YY64.
[25] *See, e.g.*, *Pac. Nw. Bell Tel. Co. v. Multnomah Cty.*, 68 Or. App. 375, 378 n.2 (Or. Ct. App. 1984).

county context when deciding home rule issues, suggesting that city and county home rule is substantively the same.[26]

Additionally, nine of Oregon's thirty-six counties have adopted home rule charters: Benton, Clatsop, Hood River, Jackson, Josephine, Lane, Multnomah, Washington, and Umatilla. Counties that are not "charter counties" are considered "general law counties," but still possess some degree of home rule authority under section 203.035(1) of the Oregon Revised Statutes to enact ordinances "over matters of county concern." These include, for example, Linn and Polk counties.[27]

City and county charters typically claim the maximum authority for local government allowed by law. For example, the City of Eugene's charter states: "The charter shall be liberally construed, to the end that the city have all powers necessary or convenient for the conduct of its affairs, including all powers that cities may assume under state laws or the provisions of the state constitution regarding municipal home rule." The Clatsop County charter provides another example, with an almost identical provision.

3. PREEMPTION OF LOCAL LAW

The foundation of state preemption is the principle that local law is subordinate to state law: the power to exercise home rule authority "is derived from the people of the state, and is necessarily limited to the exercise of such powers, rights, and privileges as may not be inconsistent with the maintenance and perpetuity of the state." *Straw v. Harris*, 54 Or. 424, 435 (Or. 1909). However, Oregon's constitution and statutes reserve for local governments the power to legislate on "matters of [local] concern," which includes topics that fall within the scope of municipal police powers. *See, e.g.*, Or. Const. art. VI, § 10; Or. Rev. Stat. § 221.410(1).

The Oregon Constitution prevents the Legislative Assembly from preempting local civil law with "special laws" that apply only to certain municipalities. Or. Const. art. XI, § 2. Therefore, state preemption questions revolve around the state's authority to preempt local law with "general laws"—that is, laws that express a statewide policy. *See La Grande v. Pub. Emps. Retirement Bd.*, 281 Or. 137, 145 (Or. 1978).

3.1 Express Preemption

Express preemption occurs when the Legislative Assembly includes explicit preemptive language in state statutes. A law can, but need not, use the word "preempt" to be deemed expressly preemptive. *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or. App. 457, 472 (2010). A state law can also expressly preempt with "a clearly manifested intention that the operation of state law be exclusive." *Id.* at 473.

[26] *See also id.* ("The parties did not brief or argue whether there is any substantive difference between county and city home rule charter provisions in the constitution. *Compare* Article VI, section 10 (county home rule) with Article IV, section 1(5), and Article XI(2) (city home rule). For the purposes of this opinion, we assume that there is not.").
[27] ASS'N OF OR. COUNTIES, *supra* note 23, at 49.

E.g., Or. Rev. Stat. § 634.057: "No city, town, county or other political subdivision of this state shall adopt or enforce any ordinance, rule or regulation regarding pesticide sale or use."

3.2 Field Preemption

Oregon case law does not recognize implied field preemption. *Thunderbird Mobile Club*, 234 Or. App. at 474 ("[T]he occupation of a field of regulation by the state has no necessary preemptive effect on the civil or administrative laws of a chartered city.").

3.3 Conflict Preemption

Conflict preemption occurs when a state and local law "cannot operate concurrently." *La Grande*, 281 Ore. at 148. A court may find that an ordinance is preempted despite a locality's home rule authority when "the operation of the local law makes it impossible to comply with a state statute." *Thunderbird Mobile Club*, 234 Or. App. at 474.

For example, in *Springfield Util. Bd. v. Emerald People's Util. Dist.*, 339 Or. 631, 648 (Or. 2005), the court held that a city ordinance excluding a public utility from the city's territory was preempted by a state statute that allocated exclusive service of that territory to the utility because the two were in direct conflict.

To balance the tension between matters of local and statewide concern, Oregon courts follow the standard in *La Grande v. Public Employees Retirement Board*, which applies to cases where state and local governments are pursuing conflicting substantive objectives. The court will first decipher whether "the local rule in truth is incompatible with the [state] legislative policy, either because both cannot operate concurrently or because the legislature meant its law to be exclusive." *La Grande*, 281 Or. at 148. If it is, the local rule will be preempted by the state law.

3.4 State Laws with Potential for Local Climate Preemption

Building Codes. Or. Rev. Stat. § 455.040: Imposes a statewide building code that preempts municipal ordinances that would alter the building requirements in the state code.

Building Codes. Or. Rev. Stat. § 469.277(5): Allowing local governments to adopt building energy performance standards and greenhouse gas emission reductions standards that are more stringent or broader than the state's but with some limitations. For example, the municipal standards cannot "exceed the energy efficiency requirements of the state building code for new buildings, except where permitted under ORS 455.040."

Taxes. Or. Rev. Stat. § 317A.158(1): Preempts local governments from adopting "a tax upon commercial activity or upon receipts from grocery sales." This includes initiatives similar to Portland's Clean Energy Fund, which was grandfathered in under this law.[28]

Vehicles. Or. Rev. Stat. § 319.950: Prohibits localities from enacting or amending a tax on fuel for motor vehicles unless they hold an election and receive approval by the electors of that local government.

Plastic Pollution. Or. Rev. Stat. § 459A.759: Prohibits localities from passing bag bans (e.g., on reusable plastic bags, single-use checkout bags) that are not identical to the statewide bag ban (§§ 459A.755 and 459A.757). However, localities may enact penalties for violations of the bans that differ from the state laws.

Plastic Pollution. Or. Rev. Stat. § 616.894: Prohibits localities from passing laws related to plastic straws that are not identical to the statewide single-use plastic straw law (§ 616.892).

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

The primary framework for preemption law in Oregon is described in *La Grande v. Public Employees Retirement Board*. As a general principle, courts "presume[] that the legislature did not mean to impliedly repeal the provisions of a city's civil or administrative law, and courts should seek to reconcile the operation of both state and local laws if possible." *Thunderbird Mobile Club*, 234 Or. App. at 471.

Based on the structure of Oregon's home rule authority and the *La Grande* framework, preemption law can be broadly categorized into three areas: (1) civil law regarding the mode of local government; (2) civil law regarding substantive policy objectives; and (3) criminal law. The discussion here focuses on the second category, as those laws are most relevant in the context of cities' climate policy.

The cases below describe how Oregon courts balance local control over matters of local concern, authorized by the state constitution and statutes, with the state's power to supersede local legislation.

- *La Grande v. Pub. Emps. Retirement Bd.*, 281 Or. 137 (Or. 1978): *La Grande* provides the general framework for preemption analysis in Oregon. The case was brought by two cities challenging a state law that required police and firefighters employed by a city to be brought within the state's retirement system by a certain date. The cities argued that the state law infringed upon their local authority. In evaluating these claims, the opinion offers separate preemption standards for two categories of laws based on their content: (1) for laws that bear on the structure and procedures of local government;[29] and (2) for laws with substantive policy

[28] *See* Cole Souder & Danny Noonan, *Funding Building Decarbonization: Policy Options for Local Governments in Oregon*, GREEN ENERGY INST. & BREACH COLLECTIVE (2024), https://perma.cc/7G8C-JCH9.

[29] Although of less relevance to city climate policy, the preemption standard for laws regarding the mode of local government is as follows: "When a statute is addressed to a concern of the state with the structure and procedures of local agencies, the statute impinges on the powers reserved by the amendments to the citizens of local communities. Such a state concern must be justified by a need to safeguard the interests of persons or entities affected by the procedures of local government." *La Grande*, 281 Or. at 156.

objectives. The second standard is most relevant to the climate context. If a state passes "a general law addressed primarily to substantive social, economic, or other regulatory objectives of the state," that law "prevails over contrary policies preferred by some local governments if it is clearly intended to do so." *Id*. at 156. To carry out the analysis, a court must first decipher whether the local rule "is incompatible with the [state] legislative policy, either because both cannot operate concurrently or because the legislature meant its law to be exclusive." *Id.* at 148. If it is, the local rule will be preempted by the state law. However, the *La Grande* court suggests that there is a presumption that local and state laws do not conflict: "It is reasonable to interpret local enactments, if possible, to be intended to function consistently with state laws, and equally reasonable to assume that the legislature does not mean to displace local civil or administrative regulation of local conditions by a statewide law unless that intention is apparent." *Id.* at 148–49. This language provides some additional protection to local measures. Still, this case is understood to have narrowed past interpretations of home rule authority, such as the more expansive view adopted in *Heinig v. City of Milwaukie*.[30]

- *Thunderbird Mobile Club v. City of Wilsonville*, 234 Or. App. 457 (2010): This case contains helpful clarifications about the standard for finding implied preemption, illustrating that findings of implied field preemption are especially unlikely in Oregon courts. The issue in the case was whether a city ordinance regulating the conversion of use of mobile home parks was preempted by state law because the ordinance contained additional requirements that the relevant state law did not, effectively prohibiting a conversion that would have been permitted under state law. The court held that, in the absence of the state's express intent to preempt, the ordinance was not preempted. *Id*. at 474. "Under [*La Grande*] the occupation of a field of regulation by the state has no necessary preemptive effect on the civil or administrative laws of a chartered city. Instead, a local law is preempted only to the extent that it 'cannot operate concurrently' with state law, i.e., the operation of local law makes it impossible to comply with a state statute." *Id.* at 474. In other words, absent any express language in state law, a preemption analysis will look only for conflict preemption, not field preemption.

- *Owen v. City of Portland*, 305 Or. App. 267 (2020): This case sheds additional light on courts' interpretation of the *La Grande* intent requirement. The issue in the case was whether a Portland ordinance requiring landlords to pay tenants reallocation assistance in certain circumstances was preempted by a state law on rent control. The state law had a specific preemption clause, which stated: "a city or county shall not enact any ordinance or resolution which controls the rent that may be charged for the rental of any dwelling unit." *Id*. at 274. The court held that the state legislature expressed clear intent to preempt local "rent control"

[30] The *Heinig* rule states: "The legislative assembly does not have the authority to enact a law relating to city government even though it is of general applicability to all cities in the state unless the subject matter of the enactment is of general concern to the state as a whole, that is to say that it is a matter of more than local concern to each of the municipalities purported to be regulated by the enactment." *Heinig v. City of Milwaukie*, 231 Or. 473, 479 (Or. 1962).

ordinances but that it did not "unambiguously intend to preempt other types of restrictions." *Id.* at 277. Because the ordinance did not regulate "rent control," it was not preempted by the state law. *Id.* at 269.

4.1 Recent and Ongoing Litigation

Several cases on home rule and state preemption were decided in 2024, including:

Thorin Props. Ltd. v. City of Eugene, 334 Or. App. 570 (Or. Ct. App. 2024): The Oregon Court of Appeals considered whether an ordinance, which set a cap on what landlords can charge as an applicant screening fee, is preempted by the Oregon Residential Landlord and Tenant Act, which permits landlords to charge applicant screening fees. It held that the local law is not preempted because compliance with both city and state law was not impossible. *Thorin Props.*, 334 Or. App. at 575.

Shevtsov v. Dep't of Revenue, 2024 Or. Tax LEXIS 8 (2024): The Oregon Tax Court considered whether a local rule that the Board of Property Tax Appeals will charge a $30 fee to file a petition is preempted by state property tax laws. It held that the local charge is not preempted because the relevant state law "stops far short of 'unambiguously express[ing] an intention to preclude local governments from regulating in the same area as that governed by the statute.'" *Shevtsov*, 2024 Or. Tax LEXIS at *14.

Schwartz v. Washington County, 332 Or. App. 342 (Or. Ct. App. 2024): The Oregon Court of Appeals considered whether an ordinance banning the sale of flavored tobacco and flavored synthetic nicotine is preempted by the state tobacco retail licensure scheme, which allows the sale of those products in certain circumstances. It held that the local law is not preempted because it is not impossible to comply with both laws and the two could operate concurrently. *Schwartz*, 332 Or. App. at 359–60.

5. BUILDING CODES

Oregon has statewide building codes at sections 455.010–455.990 of the Oregon Revised Statutes, which includes a specific preemption clause, as discussed in greater detail below. The code is administered by the state Department of Consumer and Business Services, Building Codes Division. The building codes are comprised of a number of "specialty codes" which cover specific code programs, such as commercial structures, residential structures, plumbing, elevators, manufactured dwelling parks, and more. Oregon has adopted the 2021 edition of the model International Code Council building codes across multiple specialty codes.[31]

Sections 455.148–455.180 are dedicated to the role of municipal regulation in the legislative scheme. For example, municipalities may assume the administration and enforcement of building inspection programs. Or. Rev. Stat. § 455.148. The state law also has a preemption clause. It states, "[t]he state building code shall be applicable and uniform throughout this state and in all municipalities, and no municipality shall enact or enforce

[31] *Oregon Building Codes*, INT'L CODES COUNCIL, https://perma.cc/7H9K-5WSX.

any ordinance, rule or regulation relating to the same matters encompassed by the state building code but which provides different requirements." Or. Rev. Stat. § 455.040(1).

Prior to 1978, local government authority to regulate building standards was more permissive than it is today. The case *State ex rel. Haley v. City of Troutdale* interpreted a previous version of the preemption clause to leave room for cities to regulate building standards so long as they did not prevent compliance with state standards. 28 Or. Ct. App. 93 (1977). Under that clause, the *Haley* court upheld a city building standard which was more stringent than the state standards because it was possible to comply with both by complying with the stricter city standard. However, the clause was subsequently reworded and renumbered, and now prohibits all city ordinances "relating to the same matters" as the state building code. As such, *Haley* is no longer good law.

Litigation over section 455.040 has been rare but a pair of recent cases concern a Portland ordinance requiring automatic sprinkler systems in nightclubs. *See Ragaway v. City of Portland*, 315 Or. App. 647, 650–51 (Or. Ct. App. 2021); *City of Portland v. Bldg. Codes Div.*, 313 Or. App. 93, 94 (Or. Ct. App. 2021). The issue in the cases was whether a Portland ordinance was preempted by the state building code because it included different requirements with respect to fire safety. The state Building Codes Division determined that Portland's ordinance was preempted by section 455.040 because the state building code covers fire protection systems. Portland argued that the ordinance was not preempted because it was passed as part of the city's fire code rather than its building code. *Ragaway*, 315 Or. App. at 650. The Oregon Court of Appeals did not rule on the preemption issue and instead resolved both cases on other issues. But the two cases indicate that the questions about the "different requirement" preemption clause are alive and ripe for judicial interpretation.

The preemption clause does authorize the director of the Department of Consumer and Business Services to grant exceptions[32] to section 455.040 preemption to "encourage experimentation, innovation and cost effectiveness by municipalities in the adoption of ordinances, rules or regulations which conflict with the state building code." Or. Rev. Stat. § 455.040(1).

The Oregon Court of Appeals has held that the state building code laws do not give the Building Codes Division unlimited power to penalize or compel the repeal of the city's ordinances. Rather, the Building Codes Division's power to investigate cities is limited to an alleged "violation or omission by a municipality related to enforcement of codes or administrative rules, certification of inspectors or financial transactions dealing with permit fees and surcharges." *City of Portland*, 313 Or. App. at 94.

6. ELECTRIC UTILITY CONSIDERATIONS

What is the relevant utility regulatory body in the state? Who and what does it regulate? The Oregon Public Utility Commission has "jurisdiction to supervise and regulate every public utility and telecommunications utility

[32] For more information on this "local amendment" provision, see Nick Caleb et al., *Regulating Natural Gas in Oregon Buildings: A Guide for Local Governments*, GREEN ENERGY INST. & BREACH COLLECTIVE (2023), https://perma.cc/ESD2-FMC3.

in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction." Or. Rev. Stat. § 756.040(2).

What authority, if any, do municipalities have over utilities? Cities are authorized to pass ordinances that, among other things, (a) set the terms and conditions of public utilities' use of city property; (b) require public utilities to make modifications to its equipment, facilities, or service within a city if it is reasonable or necessary in the public interest; and (c) set rates and charges to be paid to public utilities within the city if a proposed ordinance is filed with the Oregon Public Utility Commission and the agency concludes it is in the public interest. Or. Rev. Stat. § 221.420. Pursuant to Or. Rev. Stat. § 221.415, "[e]xcept where preempted or limited by federal or state law, cities have the authority to regulate their own right-of-way and require business and investor-owned utilities to obtain permission to locate in the city's right-of-way."[33]

Oregon has three investor-owned electric utilities, three investor-owned gas utilities, and thirty-eight consumer-owned electric utilities—the latter of which includes, for example, cooperatives, People's Utility Districts, and several municipally-owned utilities. Generally, cities are authorized to "build, own, operate and maintain . . . electric light and power plants." Or. Rev. Stat. § 225.020. The state Public Utility Commission regulates these utilities only with respect to safety.[34]

There have been a handful of cases involving home rule and preemption issues with respect to public utilities. Two cases related to energy generation are described below:

- *Springfield Util. Bd. v. Emerald People's Util. Dist.*, 339 Or. 631 (Or. 2005): This case arose when a new area of land was annexed to the city of Springfield. The Oregon Public Utility Commission had previously granted Emerald People's Utility District the exclusive right to serve the area, but the city sought to exclude Emerald's services so that it could be the sole provider of electricity in the city. The city argued this was within its home rule authority and its authority under § 221.420. The Oregon Supreme Court held that the city's exclusion was preempted by state law under *La Grande*: "the territorial allocation statutes limit a city's authority to exclude a utility provider from an allocated exclusive service territory to the extent that ORS 221.420(2)(a) authorizes such an exclusion." *Springfield*, 339 Or. at 648.

- *Nw. Nat. Gas Co. v. City of Gresham*, 374 P.3d 829 (Or. 2016): This case arose when utilities challenged a City of Gresham law that increased the licensing fee for each utility from 5% of the utility's gross revenues earned in the city to 7%, arguing that the law was preempted by section 221.450 of the Oregon Revised Statute. Section 221.450 authorizes cities to levy a "privilege tax" from utilities without a franchise but caps the tax at 5% of gross revenues earned within the city. The Oregon Supreme Court held that, with respect to two of the investor-owned utilities, the City's fee is not preempted by section 221.450 because "the legislature did not unambiguously express an intent to preempt cities from enacting license fees for the use

[33] League of Or. Cities, Oregon Municipal Handbook: Chapter 17: Public Works and Utilities 2 (2025), https://perma.cc/V4NN-8UZF.
[34] *See Energy – Who We Regulate*, Or. Pub. Utility Comm'n, https://perma.cc/VC73-N2TA.

of rights-of-way—even license fees that fall within the definition of 'privilege tax.'" *Nw. Nat. Gas Co.*, 374 P.3d at 852. However, the fee with respect to the Rockwood People's Utility District constituted an "intergovernmental tax" and the City, which relied on section 221.450 as authority for that tax, cannot exceed the 5% cap. *Id*. Essentially, if a city and utility have not had a franchise agreement for 30 days, section 221.450 allows the city to impose a privilege tax that does not exceed 5% of the gross revenues earned by the utility within city limits. Cities wishing to impose a higher privilege tax can do so under their home rule authority if they are taxing an investor-owned utility.

Can cities enter into franchise agreements with utilities? Yes, cities may enter into franchise agreements with utilities.[35]

How can cities intervene in Public Utility Commission proceedings? Cities can petition to intervene in the Public Utility Commission's formal proceedings. The Commission's website provides information on how to do so.[36] Cities may also participate by submitting comments on proposed rulemakings by the Commission.[37]

Does the state have an obligation to serve statute? Yes, Oregon law states, "[e]very public utility is required to furnish adequate and safe service, equipment and facilities, and the charges made by any public utility for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited." Or. Rev. Stat. § 757.020.

Has the state passed enabling legislation for community choice aggregation (CCA)? No, Oregon does not have legislation enabling community choice aggregation—essentially, group purchasing of electricity by multiple municipalities—but has considered such measures in the past.[38]

7. SECONDARY SOURCES

Amy Schlusser et al., *Building Bridges to Oregon's Transportation Future: A Comprehensive Guide to Raising and Spending Highway Revenues under the Oregon Constitution*, Green Energy Inst. (2022), https://perma.cc/Y33V-D57M.

Cole Souder & Danny Noonan, *Funding Building Decarbonization: Policy Options for Local Governments in Oregon*, Green Energy Inst. & Breach Collective (2024), https://perma.cc/7G8C-JCH9.

Nick Caleb et al., *Regulating Natural Gas in Oregon Buildings: A Guide for Local Governments*, Green Energy Inst. & Breach Collective (2023), https://perma.cc/ESD2-FMC3.

[35] League of Or. Cities, Oregon Municipal Handbook: Chapter 17: Public Works and Utilities 21 (2025), https://perma.cc/V4NN-8UZF.
[36] *See, e.g.*, *Formal Proceedings*, Or. Pub. Utility Comm'n, https://perma.cc/243B-YTDL.
[37] Or. Admin. R. §§ 860-001-0160, 860-001-0210.
[38] H.B. 2852 (2019).

Tollenaar and Associates, *County Home Rule in Oregon* (2005), https://perma.cc/CEK3-P87M (providing a comprehensive summary of county home rule, prepared for the Association of Oregon Counties).

League of Oregon Cities, *Oregon Municipal Handbook, Chapter 2: Home Rule & Its Limits* (2020), https://perma.cc/98PP-THRZ (offering another comprehensive summary of home rule as it pertains to cities in Oregon).

League of Oregon Cities, *Legal Guide to Oregon's Statutory Preemptions of Home Rule* (2020), https://perma.cc/W3T8-XBC3 (providing an overview of Oregon state preemption of local exercises of home rule authority, including an appendix of state preemption laws).

8. MISCELLANEOUS

The City of Eugene has experimented with enacting a so-called "natural gas ban," although it has not been tested under state preemption principles. The Eugene City Council approved a ban on natural gas hook-ups in new low-rise residential buildings which would have gone into effect on June 30, 2023. The Eugene city residents would then have voted on whether to approve the ordinance in November 2023. However, the City Council repealed the measure before it could go to the voters in light of a decision from the U.S. Court of Appeals for the Ninth Circuit, which struck down a similar ordinance in Berkeley, California.[39] The impact of federal preemption on local laws is beyond the scope of this toolkit but something that city advocates should bear in mind when crafting climate policy.

[39] *See generally* Nathan Wilk, *Eugene Removes an Ordinance Restricting Some Natural Gas Hookups from the Upcoming Fall Ballot*, OR. PUB. BROADCASTING (July 11, 2023), https://perma.cc/7VNC-ZZ7V.