

HOME RULE 101



Home Rule: The right to local control

The term “home rule” refers to the extent to which a city may set policy and manage its own affairs without the need to obtain authority from a state legislature, except where preempted. Voters who reside in home rule cities have the authority to establish their own form of local government and empower that government to self-regulate for the protection of the public health, safety, and welfare as well as to license, tax and incur debt. In other words, cities have complete local control, except for where expressly or impliedly preempted by the state or federal government.

The initiative and referendum powers are 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.”

OREGON CONSTITUTION, ARTICLE IV, § 1(5)

A Brief History

Oregon today is considered a “home rule” state, but this wasn’t always the case. Up until 1906, only the Oregon state legislature had the authority to incorporate a city, adopt a city charter, and define the city’s form of government. In 1906, Oregon voters approved two initiatives to amend Articles XI and IV of the Oregon Constitution. Together, these two amendments granted the authority for cities to incorporate, enact and amend their charters, and pass local laws. Today, all of Oregon’s 241 cities operate under a home rule charter.

Preemptions: Show me where I can’t

As noted above, home rule authority is not without limits. Cities are still subject to the state and federal constitutions and preemptions. Additionally, the state retains primary control over “substantive social, economic, or other regulatory objectives.” There are two types of preemptions.

An **expressed preemption** is when the legislature has unambiguously expressed an intention to preclude local regulation. For example, ORS 323.030 expressly preempts all local cigarette taxes: “The taxes imposed by [state statute] are in lieu of all other state, county or municipal taxes on the sale or use of cigarettes.”

An **implied preemption** occurs when in the absence of expressed intent, compliance with state and local law is impossible. It should be noted that the Oregon courts presume all local criminal laws to be preempted—local laws may not criminalize conduct that state law allows or permit conduct that state law prohibits.

“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[.]”

OREGON CONSTITUTION, ARTICLE XI, § 2

For additional information and guidance on home rule, please see:

- [The Origins, Evolution and Future of Home Rule](#)
- [Legal Guide to Oregon’s Statutory Preemptions of Home Rule](#)

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A Sample of Restricted and Unrestricted Areas of Local Control (This is not a comprehensive list)

RESTRICTED ACTIVITIES		UNRESTRICTED
ORS Chapter 197	Cities must comply with statewide land use planning goals.	Cities may choose the composition of their city council and form of government.
HB 2001 (2019)	Cities must comply with the single-family rezoning and middle housing inclusion mandate based on population.	Cities may enact and amend their municipal charters.
HB 2509 (2019)	Cities may not diverge from the statewide single use bag ban.	Cities may manage their city parks.
ORS 471.045 and 473.190	The state has exclusive right to tax liquor.	Cities may regulate short-term rental properties. ¹
ORS 475B.454	Locals laws may not be inconsistent with the Adult and Medical Use of Cannabis Act.	Cities have a right to impose a local gas tax. ²
ORS 837.385	The authority to regulate the ownership and operation of unmanned aircraft systems is vested solely in the state legislature.	Cities may enact local dog licensing regulations.
ORS 279A.020	Cities must comply with the Public Contracting Code.	Cities may regulate ridesharing activities.
ORS 294.316	Cities must comply with the Local Budget Law.	Cities may enact local nuisance regulations.
Or Const, Art XI, §2	Cities may not enact local criminal laws that criminalize conduct permitted by state law or permit conduct criminalized by state law.	Cities may regulate large social gatherings.

¹There are restrictions how tax revenue collected from transient lodging taxes may be used. *See* ORS 320.300 to 320.350.

² However, revenues must be spent only for the construction, reconstruction, improvement, repair, maintenance, operations and use of public highways, roads, streets, and roadside rest areas in the city. *See* Or Const, Art. IX, §3a.