

Harnessing the Power of Home Rule

JENNA JONES, LOC LOBBYIST

PATTY MULVIHILL, LOC INTERIM EXECUTIVE DIRECTOR

Overview

- What is Home Rule?
- Why does Home Rule matter?
- What should Oregon's local government leaders be doing to harness the power of Home Rule?

What is Home Rule?

OREGON AND NATIONALLY

A solid blue horizontal bar at the bottom of the slide.

STATE OF OREGON



1859

You Tell Us –
What is
Home Rule?



You Tell Us –
Where do we
get our Home
Rule Power?

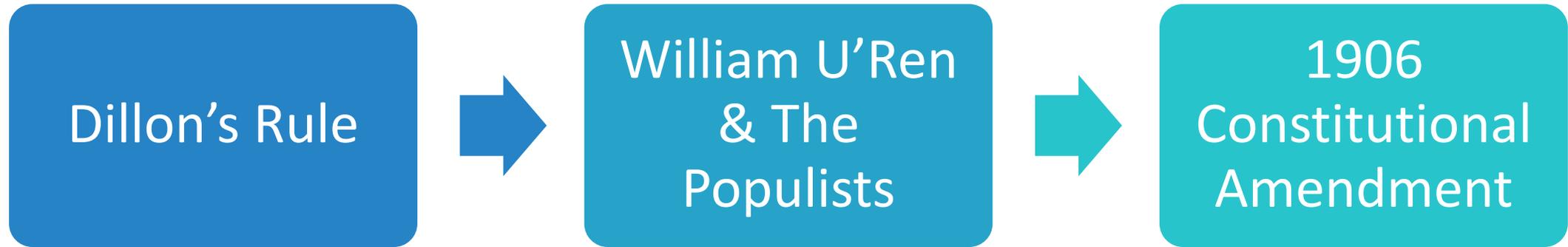


Home Rule Oregon Constitution

- Article XI, Section 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.”
- Article IV, Section 1(5). 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.”

You Tell Us –
Who is
responsible for
Home Rule in
Oregon?





Citizens Are to Thank



And Then
Came the
Courts ...

Home Rule Oregon Jurisprudence

- Step 1. Is the city's action permitted by its charter or a state statute?
- Step 2. Is the city's action incompatible with state law, either because the Legislature intended to preempt local lawmaking authority (express preemption) or because the state and local law cannot operate concurrently (implied preemption).

Home Rule Oregon Jurisprudence

- Criminal Laws. State criminal laws presumptively preempt local criminal laws because of how the Constitutional amendment is written.
- Structural Laws. Laws that interfere with a city's ability to choose its own political form are protected from preemption.
- Express Preemption. The state law, via its “text, context and legislative history ... ‘unambiguously express an intention to preclude local governments from regulating’ in the same area that is governed by the statute.”
- Implied Preemption. When the state and local law conflict with one another. However, conflict occurs only when complying with both the state and local law are impossible. Just because the state has “occupied the field” does not mean the local law on the same subject conflicts with the state law.

You Tell Us –
Give an
example of an
expressed
preemption?



You Tell Us –
Give an
example of an
implied
preemption?





Home Rule Authority - Nationally

State Constitution	
Arizona (3,500+)	New Mexico
California	North Dakota
Colorado	Ohio
Hawaii	Oklahoma (2,000+)
Illinois (25,000++)	Oregon
Kansas	South Dakota
Louisiana	Tennessee
Maine	Utah
Missouri (5,000+)	Washington
Montana	West Virginia (2,000+)
Nebraska (5,000+)	

State Constitution + Statute
Alaska
Connecticut
Iowa
Michigan
Minnesota
Nevada
Pennsylvania
South Carolina
Texas (5,000+)
West Virginia (2,000+)
Wisconsin

State Statute
Arkansas
Delaware
Florida
Georgia
Indiana
Kentucky
New Hampshire
New Jersey
North Carolina

You Tell Us –
How does
Oregon
Compare to
Other States?



The Grass Isn't Always Greener

- Florida SB 620 - Allows a business that has been engaged in a lawful business in a municipality for at least three years to claim business damages from the municipality if it enacts or amends an ordinance or charter provision that will cause a reduction of at least 15% of the business' profit as applied on a per-location basis of a business operated within the jurisdiction.
- Georgia HB 286 - Restricts a city or consolidated government with a police department from reducing annual appropriations for the police department by more than 5% of the previous fiscal year's appropriations. This would not apply if the city or consolidated government's overall revenues decrease by more than 5% in the same fiscal year, however, a city or consolidated government would still be prohibited from reducing the police department budget greater than the decrease in the amount of overall revenues.
- Montana HB 0407 - Specifically removes the power of the local electors to propose or amend a local resolution or ordinance by ballot vote.

Why Does Home Rule Matter?

LOC AND MEMBER CITIES' PERSPECTIVE



You Tell Us –
Why does
Home Rule
matter?



You Tell Us –
Why Are We
Struggling to
Protect Home
Rule?



What Should Oregon's Local Government Leaders be Doing to Harness the Power of Home Rule?

LOC AND MEMBER CITIES' PERSPECTIVE

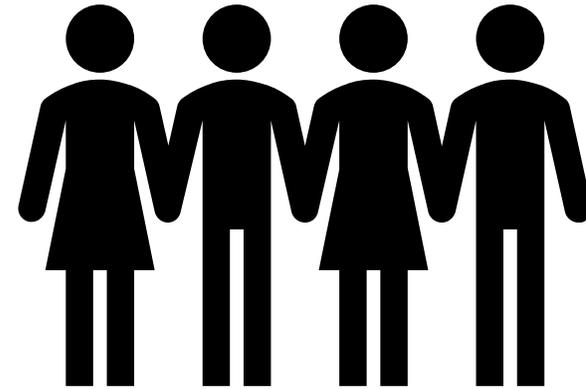
Home Rule Words Matter?!

- Home Rule means nothing to virtually everyone. Preemption means even less to people.
- State interference is generally bad, and people generally struggle with increased preemptions once it is explained.
- “State Interference” and “Keeping Local Choice” are far more effective terms

Start with Education



Legislators, Regulators



Community Members/Residents

How are all of these preemptions affecting your city's ability to be responsive to its resident's needs?



Are you addressing problems that the state or federal entities are trying to solve by preemption? Find local examples that show progress you are making toward state and federal priorities without preemption.



#BetterTogether

STEP 1: FIND PARTNERS IN YOUR COMMUNITY

- Community organizations/non-profits
- Other local government entities
- Business
- Residents
- Local government professors and academics

STEP 2: FOCUS THE MESSAGE

- Center story around local people and local democracy NOT local control
- Paint a picture for state and federal legislators that local governments are partners with a shared constituency
- Have multiple people and groups carry a message. Repetition is key.

You Tell Us –
What Do You
Need to Be
Doing Differently
to Protect Home
Rule?



Home Rule

Closing Thoughts

- Be opportunistic when it comes to fighting preemption.
- Don't be afraid to invite decision makers on tours in your community to show off your work.
- Your voice and community matters. Grassroots efforts are far more effective than sending any old lobbyist to carry a message.
- If cities don't fight for home rule, it will continue to be eroded away.

You Tell Us –
What Do You
Think We
Should Be
Doing?



Harnessing the Power – Next Steps

MARCHING ORDERS FOR THE LOC

You Tell Us –
What Are Your
Top 3 Least
Favorite
Preemptions?



You Tell Us –
What
Preemptions
Don't Bother
You?



You Tell Us –
How Do We Help
You Harness a
Love for Home
Rule in Your City?



Thank you!