You have it, use it

Home rule in Washington

AWC
ASSOCIATION OF WASHINGTON CITIES

Introduction

What is home rule?

"Home rule" is the right to locally govern on issues of local concern: "the authority of a local government to control its local affairs without interference from the state."[1] With home rule powers, a city may exercise the same powers as the state, except for any powers specifically denied in law. If either the state constitution or state statutes are silent about a city's power on a specific local issue, then under home rule, a city is free to pass laws to address the issue.

Importantly, the city does not need the state to grant it permission to act. The essence of home rule power is that the city already possesses the power. The city—not the state—decides when and how to wield it based on local circumstances.

Local authority must be preserved and strengthened

Local authority is a core principle for cities that is being threatened by a national trend of new restrictions on local decision-making.

Cities are the laboratories of democracy and a place for local elected officials to respond to unique local conditions and the needs of their communities. Recent court cases have upheld the powers of cities to regulate activities within their borders, but cities must protect against unnecessary calls for preemption and interference with local authority.

As one of the country's first home rule states, Washington's local and state officials should understand the key legal concept of home rule. Washington's early adoption of local authority was a vestige of our state's political climate at statehood and came in direct response to the role of railroads and other special interests in the state near the end of the 19th century.

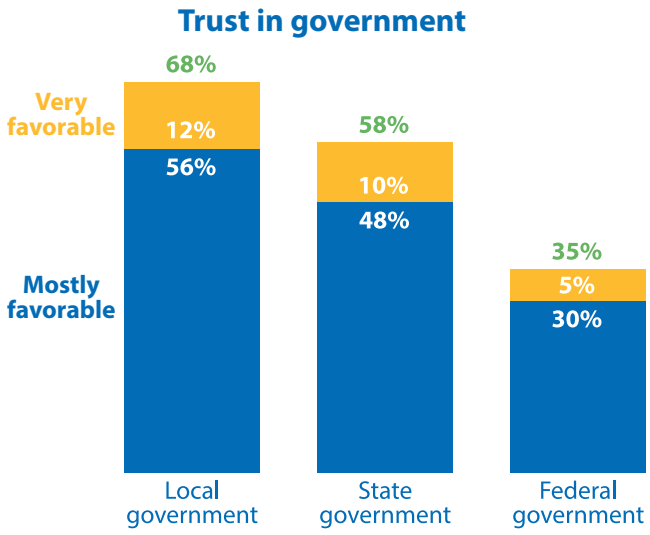
> Constituents understand that what works in a big city is not always the same as what works in a small town, which is why local governments exist.

To help preserve local decision-making authority, cities must effectively communicate about its importance and history. This report:

- Outlines the history of local decision-making (home rule) in Washington;
- Examines the case law underlying the interpretation of city powers;
- Provides background on preemption of local powers by the state;
- Contains examples showing how preemption impacts cities; and
- Delivers guidance for communicating about the importance of local authority with legislators and your community.

Our state is not alone in its need for messaging and education on local authority. Nationally, calls for uniformity over "a patchwork of regulation" and state and federal preemption of local authority are rising. Often with the support of outside special interests, state governments throughout the country are answering the call by preempting local governments' decision-making authority, which strips cities of their autonomy to enact policies close to home.

This trend directly conflicts with residents' views about the importance of governing locally. The Pew Research Center's findings consistently show that the public trusts local governments more than state or federal governments. In 2018, there was a significant gap in how people favorably view local government compared to state and federal government (see graph). Additionally, the Local Solutions Support Center (LSSC) found that 58% of voters agree that local governments are more connected to the needs of the community.[2]



Source: Pew Research Center Trust in Government survey statistics, 2018

[1] Steve Lundin, *The Closest Governments to the People: A Complete Reference Guide to Local Government in Washington State* at 883 (2015).
[2] National League of Cities, *Restoring City Rights in an Era of Preemption: A Municipal Action Guide* at 12 (2019).

Terms like *home rule* and *preemption* are technical terms that are not well understood by the public. Recent research by the LSSC and the National League of Cities (NLC) suggests that local officials need to connect with residents and state legislatures using terms that reflect the true nature of the impacts on community needs, local conditions, and the decision-making powers of their local elected officials.

Support for local authority has been a long-standing core principle for cities. The messages and information in this report are intended to help preserve the autonomy of cities, their authority to govern their communities in the best interests of their residents, and their ability to oppose policies that preempt their authority.

This report is for general educational purposes and is not intended as legal advice. Cities should consult their legal counsel with any questions or concerns about specific legal issues or risks.

Strong messaging

It matters how you communicate about home rule. Use these research-supported phrases that emphasize people governing locally:

- Local control
- Local authority
- Local decision-making
- Local democracy

Local authority is popular

Voters strongly agree with the idea that "decisions made for our communities should be made by the people who make up that community."[3]

[3] National League of Cities, *Restoring City Rights in an Era of Preemption: A Municipal Action Guide* at 15 (2019).

History of local authority in Washington

The United States Constitution does not mention local governments, and therefore home rule is defined by each state. In 1889, Washington became one of the first home rule states in the country. The state constitution, today and as originally drafted, gives cities strong home rule powers: "Any county, city, town, or township may make and enforce within its limits all such local police, sanitary, and other regulations as are not in conflict with general laws."[4] This is a direct grant of home rule authority that exists without the need for state legislation or permission to implement. Washington cities also derive home rule authority from state statute due to the first and the 40th Legislatures' efforts to clarify this authority for the courts.

However, until very recently, state courts have restricted this authority only to city actions concerning public health, safety, and welfare—despite a specific constitutional provision that provides cities the authority to make and enforce "other [local] regulations" that do not conflict with state law. Before we examine how our state courts have (until very recently) weakened this authority, let's review how our state constitution was drafted to understand why broad authority was granted to local government in the first place.

Did you know?

Missouri was the first state to adopt a municipal home rule provision in its state constitution in 1875. It applied only to the City of St. Louis.

Drafting the state constitution to reflect local control

In the summer of 1889, 75 delegates assembled in Olympia to frame the constitution for the State of Washington. All but one of the delegates to the constitutional convention were born in other states with predominantly agriculture-based economies.[5] Those states had experienced the political influence of the railroad and banking industries—much to the detriment of farmers.[6] Because of this, the delegates sought to draft a constitution that enshrined self-sufficiency and limited business influence.[7] Most Washingtonians at the time wanted "to use government against business corporations that common people feared would control their lives."[8] Although nearly half of the delegates were lawyers or businesspeople, they drafted a constitution that represented their farming constituents—one that delegated power to the people:

> The public's distrust of railroad, mining, and other corporations, concerns about special interest control of government, and general objection to the concentration of power in elites, led to a constitution that imposed numerous restrictions on the Legislature, scattered executive authority among independently elected officials, intentionally hamstrung corporations, and provided strong protections of individual liberties.[9]

In addition to adopting a state constitution granting home rule authority as a stand-alone provision, the first Washington State Legislature also included two other notable constitutional provisions that shifted authority from the state legislative branch to cities:

1. The first gave authority to incorporate to local voters and not to the Legislature.[10] Strictly speaking, cities are not "creatures of the state" as they are sometimes referred to, but rather, are born of the people.[11]
2. The second granted larger cities the authority to create their own structure of governance through a city charter. Prior to statehood, how a city functioned was at the whim of special interest influence of the members of the Legislative Assembly of the Washington Territory. Our framers wanted to avoid that "fountain of evil" by providing for local governance in the constitution.[12]

[4] Wash. Const. art. XI, § 11 (1889).
[5] R. Utter & H. Spitzer, *The Washington State Constitution*, The Oxford Commentaries on the State Constitutions of the United States at 7 (2013).
[6] Utter & Spitzer at 7.
[7] Utter & Spitzer at 6.
[8] Utter & Spitzer at 8.
[9] Utter & Spitzer at 8.
[10] Wash. Const. art. XI, § 10 (1889).
[11] There are 25 city exceptions. Lundin at 1157.
[12] Hugh Spitzer, *"Home Rule" vs. "Dillon's Rule" for Washington Cities,* 38 Seattle U.L. Rev. 809, 824 (2015).

Giving cities the power to govern themselves

The first Legislature took another action to fundamentally shift governance of cities—drafting new statutes that created categories of cities. Previously, each city had to be created by the Territorial General Assembly. Even more cumbersome, *each law of each city* had to be created by the Territorial Assembly. This allowed special interests to have outsized control of how a city functioned. In a final safeguard against concentration of power subject to special interests, the first Legislature enacted detailed legislation providing for four classes of cities, based on population.[13] In addition, first class cities have all the powers that are granted to any other class of city.[14] All cities then had statutory authority to pass city laws that provided for the general welfare of their residents, as long as they did not violate the constitution or conflict with state law.

Four classes of cities

- First class cities
- Second class cities
- Towns
- Code cities

The origin of code cities: Legislature clarifies and strengthens home rule

Despite clear legislative intent to provide broad powers of authority to cities, our state courts have often negated the Legislature's actions. Noticing that for decades the Washington Supreme Court was not recognizing charter cities' inherent home rule authority, a legal scholar stated in 1963 that "it is now too late to alter the home rule status of cities without a constitutional amendment."[15] Two years later the Legislature heeded the call—not by passing a constitutional amendment, but by creating a statutory framework for a new class of city: the code city.

In 1965 the Legislature formed a special Municipal Code Committee to develop legislation providing "a form of statutory home rule" for cities.[16] The following year, the committee reported to the Legislature that its proposed draft of the state's optional municipal code "expresses the state legislature's intent to confer the greatest power of local self-government, consistent with the State Constitution, upon the cities and directs that the laws be liberally construed in favor of the city as a clear mandate to abandon the so-called 'Dillon's Rule' of construction."[17]

Belt & suspenders: Home rule authority expressly granted in state law

The Municipal Code Committee's recommendations led to enactment of the Optional Municipal Code in 1967.[18] To draft the new code, the committee engaged an AWC staff attorney.[19] The statute was "drafted in answer to the plea of cities for more authority to run their affairs and impose taxes to meet their financial burdens."[20]

The Optional Municipal Code, Title 35A RCW, expressly states the intent to grant charter and optional municipal code cities ("code cities") broad, unspecified powers:

> "The purpose and policy of this title is to confer upon two optional classes of cities created hereby the broadest powers of local self-government consistent with the Constitution of this state.
>
> Any specific enumeration of municipal powers contained in this title or in any other general law shall not be construed in any way to limit the general description of power ...and... shall be liberally construed in favor of the municipality."[21]

RCW 35A.11.020 grants each code city the "power to organize and regulate its internal affairs within the provisions of this title and its charter," allowing each city to "adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city...." Further, the "legislative body of each code city shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law."

[13] Title 35 RCW.
[14] RCW 35.22.570. This statute also gave first class charter cities all the authorities granted to code cities when enacted in 1967.
[15] Lundin at 908.
[16] Spitzer at 840.
[17] Spitzer at 840.
[18] Spitzer at 840.
[19] Spitzer at 840.
[20] Spitzer at 841.
[21] RCW 35A.01.010.

What is "Dillon's Rule" and how is it different than home rule authority?

Dillon's Rule is a legal doctrine that describes a narrow interpretation of a local government's authority as one that is entirely granted by the state government. The origin of Dillon's Rule is two court decisions written by Judge F. Dillon of Iowa in 1868.

Under Dillon's Rule, cities have no inherent powers to govern—their powers come entirely from the state. It might be helpful to think of this a parent-child relationship—the child has no authority or autonomy unless granted by the parent. In a Dillon's Rule state, local governments lack authority unless a state law specifically allows them to act. Thirty-nine states interpret the authority of cities under Dillon's Rule.

Unlike Dillon's Rule, where cities must prove they have specific permission to act, cities in home rule states have the broad authority to act *unless* a state law prohibits the action.

One of the goals of home rule is to increase the accountability of government by reducing the state's interference in local concerns.[22] Not only is Dillon's Rule a top-down approach that diminishes the impact of local democracy, it is also a very inefficient way to govern—both for cities and the state.

Dillon's Rule severely limited local governments' ability to respond effectively and timely to local conditions in the late 1800s because governments could not take local action without permission from the state assembly. Most state legislatures are only in session for a short time each year, and back then the assembly only met every other year. This created a slow and cumbersome method of governing cities. The inflexibility of Dillon's Rule was, in part, what motivated the nationwide home rule movement in the late 1800s and early 1900s. It drove several states, including Washington, to adopt home rule provisions in their constitutions that gave greater authority to cities.

[22] *Watson v. City of Seattle*, 189 Wn.2d 149, 167 (2017).

Courts and interpretation of city powers

Washington state courts have a history of "applying a more restrictive approach to local governance than the constitution and statutes require."[23] Despite the constitution's grant of home rule authority that is also backed by state statute, the Washington Supreme Court has issued many opinions about the limited powers of cities. These decisions revive Dillon's Rule from death, like a zombie, and fail to recognize a city's broad home rule powers.[24] Through the years, the Legislature has also enacted legislation that lists specific powers of cities, which arguably already exist. This legislation is used in lawsuits against cities to show that the authority must not have existed in the first place.

In contrast, Washington courts have consistently recognized city home rule powers relating to police regulatory powers—actions addressing public health and safety.[25] Unfortunately, Washington courts have been inconsistent in recognizing a city's home rule powers *beyond* its established police powers, which has led to confusion on the scope of municipal powers.

The Supreme Court's "ping pong" legal analysis of a city's home rule powers goes back to the days of statehood and still exists today.[26] In the first 40 years after adopting the Optional Municipal Code in 1967, there were 17 cases addressing the scope of city authority decided by the Supreme Court and Court of Appeals in Washington:

- Eight cases emphasize strong home rule powers in charter and code cities;
- Nine cases use language that revives the zombie jurisprudence of Dillon's Rule; and
- In "one case with multiple opinions, justices landed on both sides."[27]

Unlike Dillon's Rule, where cities must prove they have specific permission to act, cities in home rule states have the broad authority to act unless a state law prohibits the action.

Home rule opinions[28]	Dillon's Rule opinions
Winkenwerder v. Yakima **(1958)**	
	(1965) *Bowen v. Kruegel*
	(1974) *Lutz v. City of Longview*
	(1974) *Massie v. Brown*
	(1978) *Spokane v. J-R Distributors*
Issaquah v. Teleprompter **(1980)**	
U. S. v. Bonneville **(1980)**	
Citizens v. Spokane **(1983)**	**(1983)** *Chemical Bank v. WPPSS*
	(1987) *Tacoma v. Taxpayers*
City of Bellevue v. Painter **(1990)**	
	(1991) *Employco Inc. v. Seattle*
Heinsma v. Vancouver **(2001)**	
	(2004) *Arborwood v. Kennewick*
	(2007) *Okeson v. City of Seattle*
*Biggers v. Bainbridge Island** **(2007)**	**(2007)** *Biggers v. Bainbridge Island**
Port Angeles v. Our Water **(2010)**	
Rohrbach v. Edmonds **(2011)**	

* *Biggers v. Bainbridge Island* intentionally appears on both sides.

[23] Spitzer at 810.
[24] Spitzer at 858.
[25] Lundin at 883.
[26] Lundin at 884.
[27] Spitzer at 842.
[28] Spitzer at 843.

The court's history of reliance on Dillon's Rule – but not its exception

During the years Dillon served as a judge he wrote a legal treatise on municipal corporations.[29] The following statement of Dillon's Rule is often quoted by legal scholars and appellate courts, including the Washington Supreme Court:

> It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others:
>
> **First:** those granted in *express words*;
>
> **Second:** those *necessarily or fairly implied in* or *incident* to the powers expressly granted;
>
> **Third:** those *essential* to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.[30]

However, in the same treatise, Dillon also included exceptions to his rule that our court has failed to note—including the exception that expressly rejects Dillon's Rule for charter cities:

> According to Dillon, the inherent powers of a charter city extend to all subjects and matters properly belonging to the government of municipalities. Further, city charter provisions that are "purely municipal in their character" are superior to and supersede inconsistent state statutes.
>
> At times, the Court seems bound and determined to reject home rule and fails to note its prior cases recognizing home rule and the exceptions to Dillon's Rule that Dillon himself provided.[31]

In part, this confusion arises from unnecessary and inconsistent legislation through the years—some statutes recognize or even grant broad home rule authority for cities, which arguably already existed; yet other statutes either fail to recognize these powers or even appear to invalidate home rule.[32]

Our first Legislature started the long tradition of enacting legislation as if home rule does not exist in Washington state—despite their creation of it. For example, the 1889-90 Legislature provided detailed express authority to first class cities on 38 issues including to:

- Erect parks, libraries, hospitals, streets, and sidewalks;
- Regulate disorderly conduct and activities endangering public health and safety; and
- Declare and abate nuisances.[33]

A fundamental principle of home rule is that unless a specific act is *prohibited* in state law or the constitution, a city has the power. There was—and is—no need to pass legislation that enumerates each power because the constitution provides the broad authority for a city government to act.

In 1954, "future Washington Supreme Court Justice Robert F. Brachtenbach expressed concern about the Legislature's ultimate control over cities."[34] He agreed that Washington cities enjoyed broad home rule powers, but wrote that the "'real issue…is whether they are assured of the continuation of such power without interference....'"[35] He "described this tendency of the Legislature as follows: 'in each session the Washington legislature has shown an inclination to legislate in the area of purely local affairs of the municipalities.'"[36]

[29] John F. Dillon, *Commentaries on the Law of Municipal Corporations* (1872).
[30] Lundin at 886.
[31] Lundin at 887.
[32] Lundin at 883.
[33] 1889-1890 Wash. Sess. Laws 218 § 5.
[34] Spitzer at 836.
[35] Spitzer at 837
[36] Lundin at 896.

A positive trend

Overview of five recent home rule cases

In recent years, our appellate courts have shifted and now more consistently recognize home rule in Washington state. The following five recent appellate cases create a strong foundation of home rule precedent into the future.

Broad police power and self-governance

1. ***Filo Foods, LLC, v. City of SeaTac***
183 Wn2d. 770 (2015)

This Washington Supreme Court case addressed the extent of city regulatory powers and the fundamental nature of that control over subordinate special purpose districts.

In 2013, City of SeaTac voters approved a local initiative measure to increase the minimum wage to $15 per hour along with other benefits and rights for hospitality and transportation workers. The Port of Seattle challenged the application of this regulation within its jurisdiction of the international airport.

In the Court's words:

The Revised Airports Act "reflects a fundamental difference between the powers of a special purpose district, like the Port of Seattle, and those of a city, town, or county. To interpret RCW 14.08.120 and .330 in the manner the Port of Seattle suggests, we would have to conclude that the legislature intended the Revised Airports Act, chapter 14.08 RCW, to deprive the city of SeaTac of all its police powers at the airport, even though the Port of Seattle lacks the authority to fill this regulatory gap...."

"Unlike cities, which are granted 'the broadest powers of local self-government,' … the Port of Seattle's normal authority does not include the exercise of general police powers.... A port district's rule-making authority is subordinate to the authority of the municipality within which it is situated."

Taxing authority

2. ***City of Wenatchee v. Chelan County Pub. Util. Dist. No. 1***
181 Wn. App. 326 (2014)

After paying a City of Wenatchee utility tax on domestic water sales for decades, the Chelan County Public Utility District No. 1 (PUD) sought clarification of the city's authority to charge the tax on water the PUD provided to customers located within city limits.

In the Court's words:

"The apparent objective of the [state constitutional] provision, frequently called the 'home rule provision,' was 'to bar the state legislators, whose members come from all parts of the state, from dictating local taxing policy and instead to allow municipalities to control local taxation for local purposes.'"

3. ***Watson v. City of Seattle***
189 Wn.2d 149 (2017)

This Washington Supreme Court ruling in favor of Seattle held that the Legislature delegated broad taxing authority to cities, and expressly stated that Washington is a home rule state.

The case challenged the validity of a City of Seattle ordinance imposing a "Firearms and Ammunition Tax" on each firearm and round of ammunition sold within city limits. The ordinance was designed to fund gun safety programs and related public health research.

In the Court's words:

"Article XI [of the Washington State Constitution] expressly authorizes the legislature to grant cities the power to levy taxes for 'county, city, town, or other municipal purposes.' More significantly, it strips the legislature of the authority to directly impose such taxes. Only local authorities, exercising duly delegated taxing power, may levy local taxes."

"[The state's constitutional] provisions reflect Washington's adoption of what scholars refer to as 'home rule'—shorthand for the presumption of autonomy in local governance."

Kunath v. City of Seattle
10 Wn. App 205 (2019)

The Washington Supreme Court denied review of a Court of Appeals decision, upholding the authority to levy an income tax.

Several taxpayers challenged a City of Seattle ordinance that imposed an income tax on high-income residents. The Court of Appeals ruled that although the city had the authority to levy an income tax, the income tax ordinance was invalid because it violated the uniformity requirement in the state constitution.

In the Court's words:

"The Washington Supreme Court has unequivocally held income is property, a tax on income is a tax on property, taxes on property must be uniformly levied, and a graduated income tax is not uniform. Therefore, the Washington Constitution bars any graduated income tax."

"We conclude Seattle has the statutory authority to adopt a property tax on income, but its graduated income tax… ordinance is unconstitutional."

Lakehaven Water & Sewer Dist. et al. v. City of Federal Way
195 Wn.2d 742 (2020)

This Washington Supreme Court ruling in favor of Federal Way upheld local excise taxing authority of code cities.

In the Court's words:

"This case is about the authority of one municipal corporation to impose an excise tax on another municipal corporation doing business within its borders." The City of Federal Way "adopted an ordinance that levies an excise tax on all businesses providing water or sewer services within the city's limits," including three water and sewer districts.

"Courts play a limited role in reviewing challenges to local tax policy. Under Washington's constitutional framework, the legislature delegates authority to local governments to levy taxes, and we interpret that delegation of local taxing authority for compliance with the constitution and the general laws of the state. The legislature here granted code cities broad authority to levy excises on *all* places and kinds of business. That policy prescription contemplates code cities may choose to exercise their local taxing power by imposing excises for regulation or revenue on the business of providing water-sewer services to ratepayers."

State interference with local decision-making

Case studies in preemption of local control

Local decision-making authority in the state constitution is limited by the phrase "not in conflict with general laws."[37] The courts review this conflict in authority through legal doctrines on preemption, and these cases set the boundaries of the broad authority otherwise provided to cities to govern matters of local concern and respond to community conditions.

The Legislature may also make changes by adopting legislation limiting local authority not specifically protected in the state constitution. The traditional use of preemption has been to set a minimum floor for regulation above which local policies may regulate (such as civil rights or environmental laws) or to eliminate local conflicts on a statewide matter of concern. By setting a minimum, floor preemptions allow cities to pass regulations that are more protective of public health and safety but not less.

Preemption: when is local power in conflict with general laws?

To interpret when local laws conflict with the general laws of the state, courts look at whether the ordinance "permits what state law forbids or forbids what state law permits."[38]

Under Washington case law, preemption of city authority must be clearly intended by the Legislature.[39] Local ordinances are entitled to a presumption of constitutionality unless they are preempted by state law in one of two ways: field preemption or conflict preemption.[40] The limitation on the state constitution's police power to regulate must be a state law that either occupies the field of regulation (leaving no room for local regulation) or creates a conflict such that state and local regulation cannot be harmonized.[41]

Field preemption can take two forms: expressed or implied. Where the Legislature affirmatively states its intention to occupy the field, there is "no room for doubt."[42]

In addition, courts can consider a state or federal regulation as either providing a floor that would allow enhanced local regulation or field preemption which prevents regulation on that same topic.

Conflict preemption occurs when a local ordinance forbids what a state law permits or cannot be harmonized with state law.

National research identifies increasing preemption and a dangerous trend

The National League of Cities (NLC) and the Local Solutions Support Center (LSSC) have partnered to research national trends in state interference in local decision-making. Since 2017, they have tracked growing numbers of preemptions of local authority and are noticing an increase in the scope of the preemptions. In 2019 alone, they identified 30 new preemptions in a broad range of 15 policy areas. They have also identified the following four growing national trends in preemption that are troubling for local authority and prevent cities from pursuing local solutions to problems.

1. **Vacuum preemption** occurs when the state prevents cities from regulating in a particular policy area without creating state standards. It strips local authority to "enact a policy remedy without any action or solution from the state."[43]

2. **Ceiling preemption** is the reverse of the more traditional floor preemption that allowed cities to be more protective. Under ceiling preemption cities are prohibited from "requiring anything more or different from what state law already mandates," such as state preemption of minimum wage laws.

3. **Punitive preemption** is a particularly troubling national trend. It goes one step further by threatening the local jurisdiction with punitive measures—such as withdrawal of state funding—if local laws are deemed in conflict with state law. It threatens local jurisdictions with legal liability or sanctions.

4. **Overturning local referendums** is another way states have limited local authority by overriding decisions of local voters.

[37] Wash. Const. art. XI, § 11 (1889).
[38] *State v. Kirwin,* 165 Wn.2d 818, 825 (2009).
[39] *State v. Kirwin*, 165 Wn.2d at 825.
[40] *State v. Kirwin*, 165 Wn.2d at 825 (2009).
[41] *Lawson v. Pasco*, 168 Wn.2d 675, 679 (2010).
[42] *Lenci v. Seattle*, 63 Wn.2d 664, 670 (1964).
[43] National League of Cities, *Restoring City Rights in an Era of Preemption: A Municipal Action Guide* at 6 (2019).

Case studies in preemption

Taxes

Soda taxes – In 2018, an initiative funded by the beverage industry passed that preempted local authority to use existing business regulatory powers to tax sodas and other sugary beverages, grandfathering in the one city that had previously enacted it. Washington is one of four states with a ban on local taxation of soda.

Housing and land use

Accessory dwelling unit (ADU) parking – An ADU bill, **SB 6617**, passed in 2020 that dictates how cities require parking for ADUs built near transit. The only mandate in the bill prohibits cities from requiring on-site parking for ADUs that are within a quarter mile of a major transit stop. There are two significant exceptions to this preemption. If a city has adopted or significantly amended its ADU ordinances within the prior four years, it is grandfathered in and the provisions of the bill do not apply. If a city desires to require on-site parking for ADUs near transit, it may do so, but it must provide an evidence-based justification, such as lack of on-street parking capacity.

Rent control – A law passed in 1981 expressly states that "imposition of controls on rent is of statewide significance and is preempted by the state."[44] Similar to preemption in 31 states, the law prohibits any city or town from enacting an ordinance to control the amount of rent charged for residential housing. The exception is for any housing that is either owned or managed by the public or low-income housing that is either financed or provided through a public-private agreement.

Telecommunications

Small cell regulation – Cities across the country have seen preemptions at both the state and federal level on telecommunications. Most recently, in 2018 the Federal Communications Commission (FCC) enacted preemption limiting local regulation siting small cell facilities and limiting local government authority to charge for use of its rights of way. In addition, the LSSC and NLC have identified 23 states that have preempted small cell or broadband regulation at the local level. While similar legislation has been introduced over the years, it has not passed in Washington.

Sharing economy

Sharing economy businesses – Many states have seen proposed legislation to eliminate local authority to regulate businesses that make up the sharing economy. Often these proposals are brought forward by companies seeking to avoid "patchwork regulation" by local governments or regulation like their traditional economy counterparts. For example, 44 states have preempted local authority to regulate the operation of ride-sharing companies, and eight states have limited regulation of short-term rentals.

[44] RCW 35.21.830.

Preemption's role in equity

State interference restricts local governments' actions to advance equity

While the federal government has historically used floor preemption to advance issues like civil rights, increasing state interference in local self-governance has disproportionately impacted racial and gender equity and hindered local efforts to address inequities.

Cities acknowledge that local control has not always furthered equity goals. For example, every level of government—nationwide—has a shameful history of enacting laws and policies that segregated Black Americans into less desirable housing and neighborhoods and prevented opportunities to gain intergenerational wealth from homeownership. Today, local governments are taking the lead to address impacts of inequitable policies from the past.

In addition, diversity is increasing at the local level and cities are enacting innovative policies on a wider variety of issues (such as climate change) that disproportionately impact communities of color.[45] Further, research by the LSSC found that many of the local policies targeted for preemption around the country—such as paid sick days, minimum wage, broadband authority, and affordable housing—disproportionately harm women, communities of color, and those working in lower-wage jobs due to historical, structural, and cultural factors.[46] Rather than enacting a "protective minimum," modern preemption can limit local actions to advance equity and instead perpetuate historical and systemic gender and racial inequity.

> "[P]reemption has long been used as a tool to limit the economic and political power of Black, Indigenous, and other people of color (BIPOC) communities, women, immigrants, LGBTQ people, and workers in low-wage industries."[47]

[45] National League of Cities & Local Solutions Support Center, *Principles of Home Rule for the 21st Century* at 14-15 (2020).

[46] Local Solutions Support Center, *A Session Like No Other* at 5 (2021); Partnership for Working Families, *For All of Us, By All of Us: Challenging State Interference to Advance Gender and Racial Justice* at 3 (2019).

[47] Local Solutions Support Center, *A Session Like No Other* at 5 (2021).

Conclusion

To help preserve local decision-making authority, cities must effectively communicate about its importance and history. Where local authority already exists, cities must work with their local coalitions to build understanding and advocate affirmatively for local power.

Some steps cities can take include:

- Where you believe you have local authority, exercise authority in consultation with your city's legal counsel. Do not look to the Legislature for affirmative authority on issues of local control.
- Proactively educate legislators, courts, and communities about the foundation and importance of local control.
- Frame your explanations in terms that resonate. Use these favored and research-confirmed terminologies that put the focus on people governing locally:
    - Local control
    - Local authority
    - Local decision-making
    - Local democracy
- Follow the work of the Local Solutions Support Center as it tracks national trends on successes and threats around protection of local decision-making authority.

Support for local authority is a long-standing core principle for cities. With consistent messaging, cities can help preserve their autonomy, their authority to govern their communities in the best interest of their residents, and their ability to oppose policies that preempt their authority.

Voters support local democracy

68% **agree** that when state legislators prevent local communities from passing laws or striking down local laws, they threaten local democracy and silence the voices of the people.

70% **agree** that preemption happens because corporate special interests and lobbyists convince state lawmakers to block a local law.

69% **support** local authority to improve upon state law—legislators should establish laws that act as a minimum statute or floor, and local communities should be allowed to build and improve upon state law.

Source: LSSC

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Messaging dos & don'ts

Do!

✓ **Do** use the terms "local democracy," "local decision-making," and "local control."

✓ **Do** make the message about people, not about local officials. Voters strongly agree with the idea that "decisions made for our communities should be made by the people who make up that community."

✓ **Do** emphasize the importance of local decision-making—local decisions should be made close to home.

✓ **Do** be prepared to fight values with values. Preemption advocates argue that preemption is necessary to escape the "oppression of local control" and that local regulations are being used to violate liberty and freedom. Counter those claims with the publicly shared values of local democracy, control, and the community's ability to best meet unique views, values, and needs.

Don't!

✗ **Don't** use the word "preemption." Make it clear what's transpiring and use the term "state interference" instead.

✗ **Don't** disparage the role of state government. People believe that some issues are best dealt with by the state, as long as local governments are free to build and improve on state minimum standards.

✗ **Don't** accept the argument that preemption is needed to avoid a patchwork of laws inside a state. Businesses deal with different city laws, tax rates, and health standards every day. If state lawmakers believed that "one size fits all," they would pass statewide standards and protections.

See the Local Solutions Support Center at **supportdemocracy.org** for more suggestions.

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