

## NEW YORK

### CONSTITUTIONAL AND STATUTORY PROVISIONS

#### **New York Constitution**

- N.Y. CONST. art. IX, § 1. Bill of rights for local governments.

Effective local self-government and intergovernmental cooperation are purposes of the people of the state. In furtherance thereof, local governments shall have the following rights, powers, privileges and immunities in addition to those granted by other provisions of this constitution:

- N.Y. CONST. art. IX, § 2. Powers and duties of legislature; home rule powers of local governments; statute of local governments.

(a) The legislature shall provide for the creation and organization of local governments in such manner as shall secure to them the rights, powers, privileges and immunities granted to them by this constitution.

(b) Subject to the bill of rights of local governments and other applicable provisions of this constitution, the legislature:

(1) Shall enact, and may from time to time amend, a statute of local governments granting to local governments powers including but not limited to those of local legislation and administration in addition to the powers vested in them by this article. A power granted in such statute may be repealed, diminished, impaired or suspended only by enactment of a statute by the legislature with the approval of the governor at its regular session in one calendar year and the re-enactment and approval of such statute in the following calendar year.

(2) Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership, or (b), except in the case of the city of New York, on certificate of necessity from the governor reciting facts which in the judgment of the governor constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature.

(3) Shall have the power to confer on local governments powers not relating to their property, affairs or government including but not limited to those of local legislation and administration, in addition to those otherwise granted by or pursuant to this article, and to withdraw or restrict such additional powers.

(c) In addition to powers granted in the statute of local governments or any other law, (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects,

whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:

- (1) The powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees, except that cities and towns shall not have such power with respect to members of the legislative body of the county in their capacities as county officers.
  - (2) In the case of a city, town or village, the membership and composition of its legislative body.
  - (3) The transaction of its business.
  - (4) The incurring of its obligations, except that local laws relating to financing by the issuance of evidences of indebtedness by such local government shall be consistent with laws enacted by the legislature.
  - (5) The presentation, ascertainment and discharge of claims against it.
  - (6) The acquisition, care, management and use of its highways, roads, streets, avenues and property.
  - (7) The acquisition of its transit facilities and the ownership and operation thereof.
  - (8) The levy, collection and administration of local taxes authorized by the legislature and of assessments for local improvements, consistent with laws enacted by the legislature.
  - (9) The wages or salaries, the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or sub-contractor performing work, labor or services for it.
  - (10) The government, protection, order, conduct, safety, health and well-being of persons or property therein.
- (d) Except in the case of a transfer of functions under an alternative form of county government, a local government shall not have power to adopt local laws which impair the powers of any other local government.
- (e) The rights and powers of local governments specified in this section insofar as applicable to any county within the city of New York shall be vested in such city.

## **New York Laws**

- N.Y. MUN. HOME RULE LAW ch. 36-A.
- 

### HOME RULE STRUCTURE

The home rule article of the state constitution grants all towns, villages, and cities broad initiative power. They may “adopt or amend laws relating to their property, affairs, or government” so long as not inconsistent with general law.<sup>1</sup> A general law is defined as one that applies in terms and effect to all cities, towns, or villages.<sup>2</sup> The state legislature may grant or

---

<sup>1</sup> N.Y. CONST. art. IX, § 2(c)(i).

<sup>2</sup> *Adler v. Deegan*, 251 N.E. 705, 712 (N.Y. 1929).

clarify additional powers that municipalities may exercise.<sup>3</sup> Moreover, under the constitution local governments are empowered to address specifically enumerated areas, such as matters related to officers and employees; management of roads; collection of taxes authorized by the legislature; wages, hours, welfare and safety of contracted services; and protection, order, conduct, safety, health and well-being of persons or property.<sup>4</sup> Areas of purely “state concern,” aside from the enumerated areas, are reserved exclusively to the state.<sup>5</sup> These areas are defined by judicial opinion and include taxation, education, transportation and highways, aspects of civil service, and banking.<sup>6</sup> Related to taxation, Richard Briffault has noted that in New York, “[h]ome rule concepts do not apply to local finances. Local spending, borrowing, and taxing are tightly regulated by the constitution and subject to the plenary power of the legislature to impose further restrictions.”<sup>7</sup>

In determining whether a state law preempts a local ordinance, New York courts may find implied preemption due to conflict or occupation of the field.<sup>8</sup> In the realm of land use, “where the preeminent power of a locality to regulate land use is at stake,” New York courts are hesitant to presume preemption in the absence of express language.<sup>9</sup> By contrast, in the realm of city contractors, New York courts have, for instance, struck down a local ordinance as conflicting with state law that required contractors to provide benefits to their employees’ domestic partners.<sup>10</sup>

#### LIMITATIONS ON STATE PREEMPTION

The state legislature can only act in relation to local property, affairs, or government through general law, or by special law with the request of the local government.<sup>11</sup> When acting in relation to matters of mixed state and local concern state lawmakers may act by special law without a home-rule message from the affected local government(s).<sup>12</sup> Special laws purporting

---

<sup>3</sup> *E.g.*, N.Y. MUN. HOME RULE LAW § 10 (McKinney 2017) (listing same powers as in constitution in addition to some others).

<sup>4</sup> N.Y. CONST. art. IX, § 2(c)(ii); N.Y. MUN. HOME RULE LAW § 10 (enumerating other areas).

<sup>5</sup> *See* New York State Department of State Division of Local Government Services, NEW YORK LOCAL GOVERNMENT HANDBOOK, 36 (6th ed. 2009); *see Adler*, 167 N.E. at 713 (Cardozo, J., concurring).

<sup>6</sup> *Handbook*, *supra* note 5, at 36.

<sup>7</sup> Richard Briffault, *Local Government and the New York State Constitution*, HOFSTRA L. & POL. SYMP. 79, 90 (1996).

<sup>8</sup> *See Sunrise Check Cashing & Payroll Servs., Inc. v. Town of Hempstead*, 933 N.Y.S.2d 388, 395-96 (N.Y. App. Div. 2011) (articulating judicial standards for finding conflict or field preemption).

<sup>9</sup> *Wallach v. Town of Dryden*, 16 N.E.3d 1188, 1195 (N.Y. 2014).

<sup>10</sup> *Council of City of New York v. Bloomberg*, 846 N.E.2d 433 (N.Y. 2006) (invalidating New York City’s “Equal Benefits Law,” which required city contractors to provide domestic partnership benefits to their employees).

<sup>11</sup> N.Y. CONST. art. IX, 2(b); N.Y. CONST. art. IX § 3(d)(4) (defining “special law” as a law that applies in terms and effect to one or more, but not all counties, cities, towns or villages).

<sup>12</sup> *Empire State Chapter of Associated Builders and Contractors, Inc. v. Smith*, 992 N.E.2d 1067, 1071 (N.Y. 2013) (observing that the state may preempt by special law with legislation that relates both to “the property, affairs or government of a local government” and to “matters of substantial state concern”).

to address matters of state concern must bear a reasonable relationship and further the asserted goal.<sup>13</sup> Hence, essentially all local enactments are subject to preemption in New York, but preemption by special law must fulfill certain constitutional procedural requirements. Although the requirement of a statewide concern in the absence of a home-rule message is supposed to constrain the legislature's ability to preempt, the courts' flexibility in finding a statewide concern in most legislation has allowed the state legislature to preempt routinely policy initiatives adopted by New York City.<sup>14</sup>

In a case illustrating the importance of the distinction between general and special law, the New York Court of Appeals ruled unconstitutional a state law governing labor negotiation procedures for New York City only.<sup>15</sup> The law gave the state public employees board exclusive jurisdiction over negotiation impasses between the City and the police, effectively removing the authority of an equivalent local board that historically handled public employee labor disputes.<sup>16</sup> The court found it indisputable that the state act was a special law because it applied only to New York City.<sup>17</sup> Furthermore, it related to "property affairs or government" of the city because it regulated the terms and conditions of employment of its public safety force.<sup>18</sup> Additionally, the court found unpersuasive the state's claim that the law would advance the goal of uniformity with respect to impasse procedures because every other city could still opt out of the state board's jurisdiction with a satisfactory local board.<sup>19</sup> Thus, without a "home rule message," a request from New York City for the law was invalid.<sup>20</sup> In a related case five years later, a similar law that applied to every jurisdiction was held constitutional.<sup>21</sup>

---

<sup>13</sup> *City of New York v. Patrolmen's Benevolent Ass'n of City of N.Y.*, 676 N.E.2d 847, 851 (N.Y. 1996) (hereinafter "PBA").

<sup>14</sup> *E.g.*, *Greater N.Y. Taxi Ass'n v. State*, 993 N.E.2d 393, 401 (N.Y. 2013) (concluding that state law regulating taxi medallions and "street hails" in New York City's outer boroughs was "a matter of substantial state concern" and therefore did not require "home-rule message" from city). Along these lines, the state legislature recently overrode New York City's ordinance imposing a five-cent fee on plastic bags; if challenged, a court presumably would find a "statewide" interest not in this legislation that abnegated the need for a home-rule message from the City. Jesse McKinley, *Cuomo Blocks New York City Plastic Bag Law*, N.Y. Times, Feb. 14, 2017, at <https://www.nytimes.com/2017/02/14/nyregion/cuomo-blocks-new-york-city-plastic-bag-law.html>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 849.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 850.

<sup>19</sup> *Id.* at 852.

<sup>20</sup> *PBA*, 676 N.E.2d at 853.

<sup>21</sup> *Patrolmen's Benevolent Ass'n of City of N.Y. v. City of New York*, 767 N.E.2d 116 (N.Y. 2001) (holding that a Public Employees' Fair Retirement Act is a special law, but the home rule procedural requirements were not triggered because the statute was enacted in furtherance of and bears a reasonable relationship to a substantial State-wide concern.).