

TEXAS

CONSTITUTIONAL PROVISIONS

Texas Constitution

- Art. III, § 56(a)(2)

The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law . . . regulating the affairs of counties, cities, towns, wards or school districts;

- Art. XI, § 5. Cities of 5,000 or more population; adoption or amendment of charters; taxes; debt restrictions.

Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters. If the number of inhabitants of cities that have adopted or amended their charters under this section is reduced to five thousand (5000) or fewer, the cities still may amend their charters by a majority vote of the qualified voters of said city at an election held for that purpose. The adoption or amendment of charters is subject to such limitations as may be prescribed by the Legislature, and no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State. Said cities may levy, assess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year, which shall exceed two and one-half per cent of the taxable property of such city, and no debt shall ever be created by any city, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent. thereon. Furthermore, no city charter shall be altered, amended or repealed oftener than every two years.

HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

Article XI, § 5, of the Texas Constitution—the Home Rule Amendment—is a grant of initiative authority to qualifying cities.¹ Hence, a home-rule city’s “powers are plenary, subject only to the limitations of the City’s own charter, ordinance, and superior statutes.”² The Home Rule Amendment also withdraws the legislature’s previous power to grant and change home rule city charters by special laws.³

¹ Quick v. City of Austin, 7 S.W.3d 109, 123 (Tex. 1998) (“A home-rule city is not dependent on the Legislature for a grant of authority.”).

² City of Galveston v. Giles, 902 S.W.2d 167, 170 (Tex. App. 1995).

³ City of San Antonio v. City of Boerne, 111 S.W.3d 22, 27 (Tex. 2003).

All legislative powers be exercised by home rule cities, either as provisions of a charter, or as ordinances, must conform to the general statutes in order to be valid. Although a home-rule city is not prevented from regulating a certain subject matter simply because the legislature has addressed the subject, an ordinance of a home-rule city that conflicts with a state statute is unenforceable to the extent of such conflict.⁴ Further, while a home-rule city has all the powers of the state not inconsistent with the state constitution, the general laws, or the city's charter, these broad powers may be limited by statute when the legislature reveals its intention with “unmistakable clarity.”⁵

A city may act for itself in any field of its activity not covered by the state in its Constitution or by general statute, but where the state adopts a general law and applies it to all cities of a certain class, no city of such class is authorized to enact contrary legislation.⁶ The Texas legislature has a well-developed body of jurisprudence on what qualifies as unconstitutional “local or special” legislation,⁷ which could be relied upon to help define what is a “general law” for preemptive purposes. There are no known Texas judicial opinions, however, linking these two constitutional provisions. Hence, it appears that the legislature may essentially preempt Texas cities on any subject, so long as the means of doing so is not an unconstitutional local or special law.

⁴ City of Santa Fe v. Young, 949 S.W.2d 559, 560 (Tex. App. 1997).

⁵ City of Corpus Christi v. Five Citizens of Corpus Christi, 103 S.W.3d 660, 663 (Tex. App. 2003) (citing Proctor v. Andrews, 972 S.W.2d 729, 733 (Tex. 1998)).

⁶ City of Beaumont v. Gulf States Utilities Co., 163 S.W.2d 426, 430 (Tex. App. 1942) (citation omitted).

⁷ E.g., Maple Run at Austin Mun. Util. Dist. v. Monaghan, 931 S.W.2d 941, 945 (Tex. 1996) (“The primary and ultimate test of whether a law is general or special is whether there is a reasonable basis for the classification made by the law, and whether the law operates equally on all within the class.”) (citations omitted).