

MICHIGAN

CONSTITUTIONAL AND STATUTORY PROVISIONS

Michigan Constitution

- MICH. CONST. art. VII, § 1. Counties; corporate character, powers and immunities.

Each organized county shall be a body corporate with powers and immunities provided by law.

- MICH. CONST. art. VII, § 2. County charters.

Any county may frame, adopt, amend or repeal a county charter in a manner and with powers and limitations to be provided by general law, which shall among other things provide for the election of a charter commission. The law may permit the organization of county government in form different from that set forth in this constitution and shall limit the rate of ad valorem property taxation for county purposes, and restrict the powers of charter counties to borrow money and contract debts. Each charter county is hereby granted power to levy other taxes for county purposes subject to limitations and prohibitions set forth in this constitution or law. Subject to law, a county charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns.

- MICH. CONST. art. VII, § 21. Cities and villages, incorporation, taxes, and indebtedness.

The legislature shall provide by general laws for the incorporation of cities and villages. Such laws shall limit their rate of ad valorem property taxation for municipal purposes, and restrict the powers of cities and villages to borrow money and contract debts. Each city and village is granted power to levy other taxes for public purposes, subject to limitations and prohibitions provided by this constitution or by law.

- MICH. CONST. art. VII, § 22. Charters, resolutions, ordinances; enumeration of powers.

Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.

- MICH. CONST. art. VII, § 34. Construction of constitution and law concerning counties, townships, cities, villages.

The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor. Powers granted to counties and townships by this constitution and by law shall include those fairly implied and not prohibited by this constitution.

Michigan Statutes

- MICH. COMP. LAWS § 117.4j (2017).

Each city may in its charter provide:

(3) Municipal Powers. For the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state.

HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

The Michigan constitution provides home rule for cities and counties. These provisions were first enacted in 1908, and then largely transferred over to Michigan's current constitution of 1963. Michigan has a variety of forms of local government, including also villages and townships. Because cities and counties are the two most powerful forms of local government, this memorandum will focus on them, although prominent cases involving conflict between local and state law also concern townships.

The constitution empowers counties, cities, and villages to adopt charters for home rule. Only two counties, Wayne (Detroit) and Macomb (suburban Detroit) have adopted such charters.¹ All cities and some villages are governed by a charter.² In addition to the constitution, the Michigan legislature has passed statutes that fill in the details of home rule.³ With respect to both cities and counties, these statutes are quite detailed. For cities, for instance, the statute grants seemingly broad police powers to “regulate . . . trades, occupations, and amusements within city boundaries, if the regulations are not inconsistent with state or federal law, and the prohibition of

¹ Ballotpedia, Counties in Michigan, *available at* https://ballotpedia.org/Counties_in_Michigan.

² *Id.*

³ For cities, this statute is known as the “Home Rule Cities Act of 1909,” and it has been updated repeatedly in the century-plus since its enactment. *See* MICH. COMP. LAWS §§ 117.1 to §§ 117.38 (2017). For counties, §§ 45.501 to 45.521 of MICH. COMP. LAWS explain the charter adoption process and permissive and mandatory charter provisions. One permissive provision is “[t]he authority to perform at the county level any function or service not prohibited by law, which shall include, by way of enumeration and not limitation: Police protection, fire protection, planning, zoning, education, health, welfare, recreation, water, sewer, waste disposal, transportation, abatement of air and water pollution, civil defense, and any other function or service necessary or beneficial to the public health, safety, and general welfare of the county.” *Id.* § 45.515(c).

trades, occupations, and amusements that are detrimental to the health, morals, or welfare of the inhabitants of that city,” and to “enforce[] . . . police, sanitary, and other ordinances that are not in conflict with the general laws.”⁴ Note that the statutes are inconsistent in referring to either “laws” or “general laws” as preemptive. Perhaps due to this inconsistency, there is no case law distinguishing preemption by state “law” from preemption by “general law” for the purposes of validity. With respect to fiscal authority, the constitution itself limits local power, as do many sections of the home rule statute.⁵

Michigan’s home rule system is essentially legislative in structure. A recent Michigan Supreme Court case clarified that at least in the regulatory realm, cities’ default authority is quite broad.⁶ Despite this broad default authority, the legislature may exercise plenary control over local governments if and when it sees fit. This principle was clearly illustrated by the state’s passage of legislation that allowed an emergency manager to steer Detroit into bankruptcy, essentially depriving the elected city council and mayor of all their powers.⁷ A federal bankruptcy court, relying on Michigan law, held that the arrangement did not violate the home rule provisions of the Michigan constitution.⁸

A municipality is precluded from acting if its ordinance is in direct conflict with a state statutory scheme or if the statutory scheme occupies the field of regulation in which the municipality seeks to act, even where there is no direct conflict between the schemes of regulation.⁹ “Preemption” and “conflict” are separate doctrines under which a municipal ordinance may be found invalid; under preemption doctrine a municipality may not invade a field completely occupied by state statute while “conflict doctrine” only invalidates ordinances actually in conflict

⁴ *Id.* § 117.4i(d) & (j).

⁵ *E.g., id.* § 117.5 (prohibiting cities from increasing property tax rates by more than 2 % except in limited circumstances).

⁶ *Assoc. Builders & Contractors v. City of Lansing*, 880 N.W.2d 765, 769 (Mich. 2016) (concluding that cities have broad powers over local concerns, and overruling prior case to the contrary from before the 1963 constitution).

⁷ 2011 Mich. Pub. Act 133. The state has also placed other cities and school districts under emergency management pursuant to a statute originally passed in 1990, although Detroit’s was the most prominent in that it included bankruptcy and led to a reported judicial decision. 1990 Mich. Pub. Act. 72; *see also* Josh Hakala, *How Did We Get Here? A Look Back at Michigan’s Emergency Manager Law*, Mich. Radio, Feb. 3, 2016, *available at* <http://michiganradio.org/post/how-did-we-get-here-look-back-michigans-emergency-manager-law> (discussing application of the law to Flint and its role in the water crisis); Clayton P. Gillette, *Dictatorships for Democracy: Takeovers of Financially Failed Cities*, 114 COLUM. L. REV. 1373, 1396 (2014) (discussing Michigan’s emergency management regime); Michelle Wilde Anderson, *Democratic Dissolution: Radical Experimentation in State Takeovers of Local Governments*, 39 FORDHAM URB. L.J. 577, 586-92 (2012) (tracing the evolution and applications of Michigan’s emergency manager law from 1990 to 2012).

⁸ *In re City of Detroit*, 504 B.R. 97, 160 (Bankr. E.D. Mich. 2013).

⁹ *AFSCME v. City of Detroit*, 652 N.W.2d 240, 249 (Mich. Ct. App. 2002), *aff’d*, 662 N.W.2d 695; *People v. Llewellyn*, 257 N.W.2d 902, 904 (1977); *In re Wilcox*, 233 F.3d 899, 906 n. 5 (6th Cir. 2000) (“As the provisions of the Michigan Constitution and Home Rule City Act make clear, cities such as Detroit are empowered to enact any ordinance or charter provision deemed necessary for the public interest, as long as the enactment is not contrary to or preempted by the state constitution or state laws.”).

with state law where the entire area has not been preempted.¹⁰ In the absence of complete field occupation, local governments are free to regulate beyond state law's minimum requirements.¹¹

¹⁰ *E.g.*, *City of Detroit v. Recorder's Court Traffic and Ordinance Judge*, 304 N.W.2d 829, 840 (1981) (engaging in both conflict and field analysis in determining whether Detroit anti-prostitution ordinance was preempted).

¹¹ *Miller v. Fabius Tp.*, 114 N.W.2d 205, 207-08 (Mich. 1962) ("The mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements.").