

ALASKA

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Alaska constitution makes home rule available to cities of the first class.¹ Only 10 of Alaska's 144 cities currently have home rule.² Alaska is one of only two states—the other being Louisiana—that does not have counties; Alaska uses “boroughs” instead. Certain boroughs may opt in to home rule.³ 11 of the 19 organized boroughs have opted into home rule.⁴

Alaska Constitution

- Art. X, Section 1. Purpose and Construction

The purpose of this article is to provide for maximum local self-government A liberal construction shall be given to the powers of local government units.

- Art. X, Section 2. Local Government Powers

All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

- Art. X, Section 9. Charters.

The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.

- Art. X, Section 10. Extended Home Rule

The legislature may extend home rule to other boroughs and cities.

- Art. X, Section 11. Home Rule Powers

¹ Cities of the first class must have at least 400 residents. ALASKA STAT. § 29.05.011 (2017). Boroughs of the first class must have

² Alaska Dep't of Commerce, Local Boundary Comm'n Staff, Local Government in Alaska (May 2015), *available at* <https://www.commerce.alaska.gov/web/Portals/4/pub/2015%20%20LOCAL%20GOVERNMENT%20IN%20ALASKA.pdf>, at 3 tbl. 1.

³ See ALASKA STAT. § 29.05.031 (2017) (establishing standards for incorporation of first class or “unified” boroughs).

⁴ See Local Government in Alaska, *supra* note 2, at 4 tbl. 2.

A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

HOME RULE STRUCTURE

The language of Alaska’s home-rule provision is crystal clear, seemingly delegating to home-rule local governments all powers the legislature possesses except those denied by statute, the state constitution, or the city’s or borough’s charter. Helpfully, Alaska state law lists all of the powers that have specifically been denied to home-rule governments in one place in the statutory code.⁵ The list is extensive, including structural, regulatory, and fiscal matters.

IMMUNITY FROM STATE PREEMPTION

Just as it clearly delegates presumptive authority to cities and boroughs, Alaska’s constitutional home-rule provision also, at least on its face, entitles the state to preempt any local ordinance.⁶ Despite the language of the constitution, at least one early Alaska Supreme Court opinion appeared to recognize the possibility of local ordinances or charters trumping state law on proprietary matters.⁷ Subsequent cases have backed away from that decision, without ever overruling it, and have consistently upheld state preemption.⁸

⁵ See ALASKA STAT. § 29.10.200 (2017).

⁶ See *Jacko v. State*, 353 P.3d 337, 342 (Alaska, 2015) (invalidating local legislation regulating natural resource extraction because although “home rule powers are intended to be broadly applied, a municipal ordinance may be preempted or invalidated by state statute.”) (internal quotations omitted).

⁷ E.g., *Lien v. Ketchikan*, 383 P.2d 721 (Alaska 1963) (refusing to void a lease of municipal property despite city’s noncompliance with general statute); see also *Macauley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971) (characterizing *Lien* as a case that “dealt with a matter of purely local concern, the leasing of municipal property”).

⁸ E.g., *Jacko*, 353 P.3d at 342; *Jefferson v. State of Alaska*, 527 P.2d 37 (Alaska 1974) (upholding preemption of city charter provision regarding sale of city utility assets); *Chugach v. City of Anchorage*, 476 P.2d 115 (Alaska 1970) (upholding state preemption of city’s attempt to block service by an electric utility cooperative).