

LOUISIANA

CONSTITUTIONAL AND STATUTORY PROVISIONS

Louisiana Constitution

- LA. CONST. art. VI, § 4. Existing Home Rule Charters and Plans of Government

Every home rule charter or plan of government existing or adopted when this constitution is adopted [1971] shall remain in effect and may be amended, modified, or repealed as provided therein. Except as inconsistent with this constitution, each local governmental subdivision which has adopted such a home rule charter or plan of government shall retain the powers, functions, and duties in effect when this constitution is adopted. If its charter permits, each of them also shall have the right to powers and functions granted to other local governmental subdivisions.

- LA. CONST. art. VI, § 5. Home Rule Charter.

(A) Authority to Adopt; Commission. Subject to and not inconsistent with this constitution, any local governmental subdivision may draft, adopt, or amend a home rule charter in accordance with this Section. The governing authority of a local governmental subdivision may appoint a commission to prepare and propose a charter or an alternate charter, or it may call an election to elect such a commission.

(B) Petition to Elect Commission. The governing authority shall call an election to elect such a commission when presented with a petition signed by not less than ten percent of the electors or ten thousand electors, whichever is fewer, who live within the boundaries of the affected subdivision, as certified by the registrar of voters.

(C) Adoption; Amendment; Repeal. A home rule charter shall be adopted, amended, or repealed when approved by a majority of the electors voting thereon at an election held for that purpose.

(D) Adoption by Two or More Local Governmental Subdivisions. Two or more local governmental subdivisions within the boundaries of one parish may adopt a home rule charter under this Section if approved by a majority of the electors in each affected local governmental subdivision voting thereon in an election held for that purpose. The legislature shall provide by law the method of appointment or election of a commission to prepare and propose a charter consistent with Paragraph (A) of this Section and the method by which the electors may petition for an election consistent with Paragraph (B) of this Section. However, at least one member of the commission shall be elected or appointed from each affected local governmental subdivision.

(E) Structure and Organization; Powers; Functions. A home rule charter adopted under this Section shall provide the structure and organization, powers, and functions of the government of the local governmental subdivision, which may include the exercise of any power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution.

(F) Additional Powers and Functions. Except as prohibited by its charter, a local governmental subdivision adopting a home rule charter under this Section shall have the additional powers and functions granted to local governmental subdivisions by other provisions of this constitution.

(G) Parish Officials and School Boards Not Affected. No home rule charter or plan of government shall contain any provision affecting a school board or the offices of district attorney, sheriff, assessor, clerk of a district court, or coroner, which is inconsistent with this constitution or law.

- LA. CONST. art. VI, § 9

(A) Limitations. No local governmental subdivision shall (1) define and provide for the punishment of a felony; or (2) except as provided by law, enact an ordinance governing private or civil relationships.

(B) Notwithstanding any provision of this Article, the police power of the state shall never be abridged.

HOME RULE STRUCTURE, INCLUDING LIMITED IMMUNITY FROM STATE PREEMPTION

The ratification of the 1974 state constitution created a two-tiered structure for home rule in Louisiana. Pre-1974 charters of “local government subdivision[s],” a term that Louisiana courts construe as covering both parishes and municipalities,¹ retain legal effect and may provide extra, albeit limited, protection from preemption by the state legislature. Charters passed after 1974, by contrast, “may include the exercise of any power and performance of any function necessary, requisite, or proper for the management of its affairs, not denied by general law or inconsistent with this constitution.”²

The 1974 constitution “essentially constitutionalized” pre-existing city charters.³ Cities with pre-1974 charters, which include New Orleans and Baton Rouge,⁴ exercise broad initiative powers that are limited only by the state constitution and federal law.⁵ To some extent, the constitutionalization of pre-1974 charters insulates “home rule governments from unwarranted interference by the state in their affairs.”⁶ For instance, in a case concerning New Orleans’s method of appointing the members of its aviation board, the supreme court held that the state’s intervention in the charter’s distribution of powers and functions was invalid.⁷ Similarly, the court held that a state statute delegating power to a levee district could not constitutionally override the zoning power reserved to New Orleans under its charter.⁸

¹ *Savage v. Prator*, 921 So.2d 51 (La. 2006) (citing Kenneth M. Murchison, *Local Government Law*, 64 LA. L. REV. 275, 279 (2004)).

² La. Const. art. VI, § 5(E).

³ *New Orleans Campaign for a Living Wage v. City of New Orleans*, 825 So.2d 1098, 1103 (La. 2002).

⁴ Baton Rouge has consolidated its government with the surrounding parish of East Baton Rouge. See City-Parish Gov’t, Baton Rouge Gov’t Website, *available at* <http://www.brgov.com/govt/>.

⁵ *Campaign for Living Wage*, 825 So.2d at 1103.

⁶ *Id.*

⁷ *Francis v. Morial*, 455 So.2d 1168 (La. 1984).

⁸ *City of New Orleans v. Bd. of Comm’rs of the Orleans Levee Dist.*, 640 So.2d 237 (La. 1994).

There are exceptions to charter immunity, however. Under Article VI, § 9(B), “the police power of the state shall never be abridged.” Hence, if the state passes a statute pursuant to its police power, it may override a charter city’s enactment if the state’s act is “necessary to protect the vital interests of the state as a whole.”⁹ Similarly, pre-1974 charter cities are forbidden from enacting ordinances governing civil and private relationships, although the supreme court has shied away from relying on this “imprecis[e]” category to invalidate ordinances.¹⁰ In addition, the state constitution contains numerous restrictions on city taxing authority.¹¹ If a pre-1974 charter or an ordinance passed pursuant thereto conflicts with one of these constitutional provisions, the courts will hold it invalid.¹²

While a 1994 Louisiana Supreme Court case embraced a robust vision of the immunity provided by Article VI,¹³ the court embraced a decidedly more modest view of immunity in a 2002 case concerning New Orleans’s attempt to increase the minimum wage in the face of an expressly preemptive state statute. In that case, the Louisiana Supreme Court held that the state law trumped New Orleans’s charter provision that raised the minimum wage because the state statute was passed pursuant to § 9(B)’s reservation of the police power.¹⁴ The court inquired as to whether the state really was protecting a “vital interest” by preempting the minimum wage statewide, but ultimately the majority largely deferred to the state legislature’s findings.¹⁵ Parsing the somewhat inconsistent precedents, one might conclude that structural matters receive more immunity under the constitution than pure regulatory matters.

Ordinances of any local government that are not otherwise immune to preemption will be invalidated if they conflict with state law. Louisiana courts recognize the longstanding jurisprudence that prohibits a municipality from enacting ordinances inconsistent with or in contravention of state law.¹⁶ However, a municipal ordinance which goes further in its prohibitions than a state statute is valid so long as it does not forbid what the Legislature has expressly or implicitly authorized.¹⁷

⁹ *Id.* at 251.

¹⁰ *Campaign for Living Wage*, 825 So.2d at 1113 (Weimer, J., concurring) (noting that only two Louisiana cases have addressed the provision, although arguing that it was reason to invalidate New Orleans’s minimum wage).

¹¹ See LA. CONST. art. VI, §§ 26-37.

¹² *Fransen v. City of New Orleans*, 988 So.2d 225, 235 (La. 2008) (holding that New Orleans ordinance for collecting delinquent taxes conflicted with state constitution – art. VII, § 25 – that limited methods for collecting delinquent taxes).

¹³ *E.g., Orleans Levee Dist.*, 640 So.2d at 246 (noting that pre-1974 charter local “government’s power of immunity prevents the legislature from reversing, withdrawing, or denying an exercise by that city or parish of its power to enact and enforce that local law”).

¹⁴ *Campaign for Living Wage*, 825 So.2d at 1108.

¹⁵ *Id.* at 1107-08 (holding that the state law “is reasonably necessary . . . to promote economic stability and growth of the state, and thereby to promote the welfare of Louisianans,” and also “necessary to protect the vital interest of the state as a whole” and “a reasonable exercise of the state’s police power”).

¹⁶ *Restivo v. City of Shreveport*, 566 So.2d 669, 671 (La. 1990).

¹⁷ *Id.* (upholding regulation of plumbers by Shreveport that exceeded that imposed by state law).

Finally, it is worth noting that Louisiana added an amendment to the local government article of its constitution that prohibits the state from imposing certain unfunded mandates on local governments.¹⁸

¹⁸ LA. CONST. § 14.