

GEORGIA

CONSTITUTIONAL AND STATUTORY PROVISIONS

Georgia Constitution

- GA. CONST. art. III, § 6. Uniformity Clause.

Laws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law, except that the General Assembly may by general law authorize local governments by local ordinance or resolution to exercise police powers which do not conflict with general laws.

- GA. CONST. art. IX, §2, ¶ I. Home rule for counties.

(a) The governing authority of each county shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which is not inconsistent with this Constitution or any local law applicable thereto. Any such local law shall remain in force and effect until amended or repealed as provided in subparagraph (b). This, however, shall not restrict the authority of the General Assembly by general law to further define this power or to broaden, limit, or otherwise regulate the exercise thereof. The General Assembly shall not pass any local law to repeal, modify, or supersede any action taken by a county governing authority under this section except as authorized under subparagraph (c) hereof.

(b) Except as provided in subparagraph (c), a county may, as an incident of its home rule power, amend or repeal the local acts applicable to its governing authority by following either of the procedures hereinafter set forth:

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(c) The power granted to counties in subparagraphs (a) and (b) above shall not be construed to extend to the following matters or any other matters which the General Assembly by general law has preempted or may hereafter preempt, but such matters shall be the subject of general law or the subject of local acts of the General Assembly to the extent that the enactment of such local acts is otherwise permitted under this Constitution:

- (1) Action affecting any elective county office, the salaries thereof, or the personnel thereof, except the personnel subject to the jurisdiction of the county governing authority.
- (2) Action affecting the composition, form, procedure for election or appointment, compensation, and expenses and allowances in the nature of compensation of the county governing authority.
- (3) Action defining any criminal offense or providing for criminal punishment.
- (4) Action adopting any form of taxation beyond that authorized by law or by this Constitution.

(5) Action extending the power of regulation over any business activity regulated by the Georgia Public Service Commission beyond that authorized by local or general law or by this Constitution.

(6) Action affecting the exercise of the power of eminent domain.

(7) Action affecting any court or the personnel thereof.

(8) Action affecting any public school system.

(d) The power granted in subparagraphs (a) and (b) of this Paragraph shall not include the power to take any action affecting the private or civil law governing private or civil relationships, except as is incident to the exercise of an independent governmental power.

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- GA. CONST. art. IX, §2, ¶ II. Home rule for municipalities.

The General Assembly may provide by law for the self-government of municipalities and to that end is expressly given the authority to delegate its power so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly.

- GA. CONST. art. IX, §2, ¶ III. Supplementary powers.

(a) In addition to and supplementary of all powers possessed by or conferred upon any county, municipality, or any combination thereof, any county, municipality, or any combination thereof may exercise the following powers and provide the following services:

(1) Police and fire protection.

(2) Garbage and solid waste collection and disposal.

(3) Public health facilities and services, including hospitals, ambulance and emergency rescue services, and animal control.

(4) Street and road construction and maintenance, including curbs, sidewalks, street lights, and devices to control the flow of traffic on streets and roads constructed by counties and municipalities or any combination thereof.

(5) Parks, recreational areas, programs, and facilities.

(6) Storm water and sewage collection and disposal systems.

(7) Development, storage, treatment, purification, and distribution of water.

(8) Public housing.

(9) Public transportation.

(10) Libraries, archives, and arts and sciences programs and facilities.

(11) Terminal and dock facilities and parking facilities.

(12) Codes, including building, housing, plumbing, and electrical codes.

(13) Air quality control.

(14) The power to maintain and modify heretofore existing retirement or pension systems, including such systems heretofore created by general laws of local application by population classification, and to continue in effect or modify other benefits heretofore provided as a part of or in addition to such retirement or pension systems and the power to create and maintain retirement or pension systems for any elected or appointed public

officers and employees whose compensation is paid in whole or in part from county or municipal funds and for the beneficiaries of such officers and employees.

(b) Unless otherwise provided by law,

(1) No county may exercise any of the powers listed in subparagraph (a) of this Paragraph or provide any service listed therein inside the boundaries of any municipality or any other county except by contract with the municipality or county affected; and

(2) No municipality may exercise any of the powers listed in subparagraph (a) of this Paragraph or provide any service listed therein outside its own boundaries except by contract with the county or municipality affected.

(c) Nothing contained within this Paragraph shall operate to prohibit the General Assembly from enacting general laws relative to the subject matters listed in subparagraph (a) of this Paragraph or to prohibit the General Assembly by general law from regulating, restricting, or limiting the exercise of the powers listed therein; but it may not withdraw any such powers.

(d) Except as otherwise provided in subparagraph (b) of this Paragraph, the General Assembly shall act upon the subject matters listed in subparagraph (a) of this Paragraph only by general law.

- GA. CONST. art. IX, §2, ¶ IV. Planning and zoning.

The governing authority of each county and of each municipality may adopt plans and may exercise the power of zoning. This authorization shall not prohibit the General Assembly from enacting general laws establishing procedures for the exercise of such power.

- GA. CONST. art. IX, §2, ¶ V. Eminent domain.

The governing authority of each county and of each municipality may exercise the power of eminent domain for any public purpose.

- GA. CONST. art. IX, §2, ¶ VIII. Limitation on the taxing power and contributions of counties, municipalities, and political subdivisions.

The General Assembly shall not authorize any county, municipality, or other political subdivision of this state, through taxation, contribution, or otherwise, to appropriate money for or to lend its credit to any person or to any nonpublic corporation or association except for purely charitable purposes.

Georgia Statutes

Title 36. Local Government. Chapter 35. Home Rule Powers.

- GA. STAT. ANN. § 36-35-1 (2016). Short title.

This chapter shall be known and may be cited as “The Municipal Home Rule Act of 1965.”

- *Id.* § 36-35-3. Home rule for municipalities.

(a) The governing authority of each municipal corporation shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto. Any such charter provision shall remain in force and effect until amended or repealed as provided in subsection (b) of this Code section. This Code section, however, shall not restrict the authority of the General Assembly, by general law, to define this home rule power further or to broaden, limit, or otherwise regulate the exercise thereof. The General Assembly shall not pass any local law to repeal, modify, or supersede any action taken by a municipal governing authority under this Code section, except as authorized under Code Section 36-35-6.

(b) Except as provided in Code Section 36-35-6, a municipal corporation may, as an incident of its home rule power, amend its charter by following either of the following procedures

- *Id.* § 36-35-6. Limitations on home rule for municipalities.

(a) The power granted to municipal corporations in subsections (a) and (b) of Code Section 36-35-3 shall not be construed to extend to the following matters or to any other matters which the General Assembly by general law has preempted or may hereafter preempt; but such matters shall be the subject of general law or the subject of local Acts of the General Assembly to the extent that the enactment of such local Acts is otherwise permitted under the Constitution:

(1) Action affecting the composition and form of the municipal governing authority, the procedure for election or appointment of the members thereof, and the continuance in office and limitation thereon for such members, except as authorized in Chapter 2 of Title 21 or as provided in Code Section 36-35-4.1;

(2) (A) Action defining any offense, which so defined, is also an offense under the criminal laws of Georgia;

(B) Action providing for confinement in excess of six months; and

(C) Action providing for fines and forfeitures in excess of \$1,000.00;

(3) Action adopting any form of taxation beyond that authorized by law or by the Constitution;

(4) Action affecting the exercise of the power of eminent domain;

(5) Action expanding the power of regulation over any business activity regulated by the Public Service Commission beyond that authorized by charter or general law or by the Constitution;

(6) Action affecting the jurisdiction of any court; and

(7) Action changing charter provisions relating to the establishment and operations of an independent school system.

(b) The power granted in subsections (a) and (b) of Code Section 36-35-3 shall not include the

power to take any action affecting the private or civil law governing private or civil relationships, except as is incident to the exercise of an independent governmental power

HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

Georgia has a two-tiered structure of local government under its constitution. The state constitution establishes home rule for counties, whereas for municipalities it merely authorizes the legislature to establish home rule.¹ The legislature has established municipal home rule by statute, although in doing so it has exempted certain areas from the grant of authority. Notable exceptions to municipal home rule include governmental structure, taxation, and matters affecting private or civil law.² In a case illustrating the scope of the “private law exception” to home rule authority, the Georgia Supreme Court held that Atlanta could not enact a domestic partnership ordinance in the 1990’s.³

Although the constitution and statutes appear to provide reasonably broad home-rule powers, the Georgia courts still often use language redolent of Dillon’s Rule in describing the legal status of local governments.⁴ Further, the Georgia Supreme Court frequently invokes Dillon’s Rule’s narrowing canon of construction, noting that “[t]he power of cities must be strictly construed,” resolving any doubt about the existence of a power against the municipality.⁵

However broadly or narrowly interpreted, the powers granted to cities and counties are subject to preemption by general law.⁶ The fact that a provision appears in a city’s charter does not insulate it from being preempted by state law.⁷ The legislature may preempt local enactments

¹ See Ga. Mun. Ass’n, HANDBOOK FOR GEORGIA MAYORS & COUNCILMEMBERS 1-2 (5th ed. 2012), available at http://www.gmanet.com/GMASite/media/PDF/handbook/handbook_complete.pdf (noting that constitutional amendment authorizing General Assembly to establish home rule was passed in 1954, and Assembly passed statutes doing so in 1962 and 1965, the latter of which remains the core of municipal home rule today).

² See, e.g., GA. STAT. ANN. § 36-35-6 (2016) (reserving power over the following matters to the state legislature: (1) governmental structure (2) state criminal offenses (3) taxation (4) eminent domain (5) businesses regulated by the Public Service Commission beyond authorization of charter (6) court jurisdictions (7) independent school systems (8) private or civil law governing private or civil relationships); *Price v. Fulton County Comm’n*, 318 S.E.2d 153 (Ga.App. 1984).

³ *City of Atlanta v. McKinney*, 454 S.E.2d 517, 520-21 (Ga. 1995). The court also noted that the ordinance violated a separate provision of the Georgia constitution that “prohibits cities from enacting special laws relating to the rights or status of private persons.” *Id.* at 520 (citing GA. CONST. art. III, § VI, para. IV(c)).

⁴ E.g., *McKinney*, 454 S.E.2d at 520 (“Municipal corporations are creations of the state and possess only those powers that have been expressly or impliedly granted to them.”) (quoting *Porter v. City of Atlanta*, 384 S.E.2d 631 (Ga. 1989)).

⁵ *Id.* at 521 (citing *City of Macon v. Walker*, 51 S.E.2d 633 (Ga. 1949), and *City of Doraville v. S. Ry. Co.*, 181 S.E.2d 346 (Ga. 1971)).

⁶ *City of Atlanta v. Shafer*, 546 S.E.2d 565, 567 (Ga. 2001) (quoting *Peacock v. Ga. Municipal Ass’n*, 279 S.E.2d 434, 437 (Ga. 1981)).

⁷ *Shafer*, 546 S.E.2d at 567 (holding that a general law mandating salary increases for traffic court judges supersedes city charter provision to the contrary).

expressly, or preemption may be implied from the comprehensive nature of a state statute.⁸ In determining whether preemption has occurred, the courts generally attempt to discern legislative intent; such intent can be fairly implied from the sweeping language and broad scope of a general act regulating an industry on a statewide basis.⁹ The courts frequently cite the Uniformity Clause as constitutional justification for preemption.¹⁰

In theory, the Uniformity Clause of the state constitution might constrain the ability of the General Assembly to preempt local ordinances if a state law were deemed not “general.” I did not find any instances of this argument having been asserted as a defense to preemption.

Atlanta’s attempts to extend discrimination protection to gays illustrate the uncertain nature of home rule in Georgia. While, as noted above, the state supreme court invalidated Atlanta’s initial domestic partnership ordinance, the court in the same case upheld a 1986 Atlanta charter amendment that banned discrimination on the basis of sexual orientation in city hiring and other contexts.¹¹ In doing so, the court cited Atlanta’s police power under the home rule statutes, among other powers.¹² In a later case, the court upheld a rewritten domestic partner ordinance that extended benefits to the partners of city employees.¹³ In 2000, Atlanta extended its discrimination protections to private employers with ten or more employees.¹⁴ The ordinance remains in effect despite questions about its viability under the state constitution.¹⁵

⁸ City of Buford v. Ga. Power Co., 581 S.E.2d 16, 17 (Ga. 2003).

⁹ City of Atlanta v. S.W.A.N. Consulting & Sec. Services, Inc. 553 S.E.2d 594, 596 (Ga. 2001) (citing Cotton States Mut. Ins. Co. v. DeKalb County, 304 S.E.2d 386 (Ga. 1983)).

¹⁰ E.g., City of Buford, 581 S.E.2d at 590.

¹¹ McKinney, 454 S.E.2d at 521-22.

¹² *Id.* The dissent argued to no avail that the expanded protections conflicted with the more limited protected classes under state law and also were preempted by state law. *Id.* at 525 (Carley, J., dissenting)

¹³ City of Atlanta v. Morgan, 492 S.E.2d 193, 196 (Ga. 1997) (“determin[ing] that the ordinance defines ‘dependent’ consistent with state law”).

¹⁴ Atlanta Code of Ords. § 94-110, 12 (2017).

¹⁵ See Michael A. Woods, *Comment: The Propriety of Local Government Protections of Gays and Lesbians from Discriminatory Employment Practices*, 52 EMORY L.J. 515, 544 (2003); GA. EMP. LAW § 7:14 (4th ed.).