

## NEW JERSEY

### CONSTITUTIONAL AND STATUTORY PROVISIONS

#### **New Jersey Constitution**

- N.J. CONST. art. 4, § 7, ¶ 10. Private, special or local laws; municipalities and counties.

Upon petition by the governing body of any municipal corporation formed for local government, or of any county, and by vote of two-thirds of all the members of each house, the Legislature may pass private, special or local laws regulating the internal affairs of the municipality or county. The petition shall be authorized in a manner to be prescribed by general law and shall specify the general nature of the law sought to be passed. Such law shall become operative only if it is adopted by ordinance of the governing body of the municipality or county or by vote of the legally qualified voters thereof. The Legislature shall prescribe in such law or by general law the method of adopting such law, and the manner in which the ordinance of adoption may be enacted or the vote taken, as the case may be.

- N.J. CONST. art. IV, §7, ¶ 11. Liberal construction of constitutional and statutory provisions concerning municipal corporations and counties; powers of counties and municipal corporations.

The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law.

#### **New Jersey Statutes**

- N.J. STAT. ANN. 40:42-4 (2017). Municipalities given fullest powers. [“Home Rule Act”]

In construing the provisions of this subtitle, all courts shall construe the same most favorably to municipalities, it being the intention to give all municipalities to which this subtitle applies the fullest and most complete powers possible over the internal affairs of such municipalities for local self-government.

- N.J. STAT. ANN. 40:48-2 (2017). Other necessary and proper ordinances (“Optional Municipal Charter Law”). [“Home Rule Act”]

Any municipality may make, amend, repeal and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its

inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law.

- N.J. STAT. ANN. 40:69A-29 (2017). General powers of municipalities governed by optional form of government. [“Optional Municipal Charter Law”]

Each municipality governed by an optional form of government pursuant to this act shall, subject to the provisions of this act or other general laws, have full power to:

- (a) Organize and regulate its internal affairs, and to establish, alter, and abolish offices, positions and employments and to define the functions, powers and duties thereof and fix their terms, tenure and compensation;
- (b) Adopt and enforce local police ordinances of all kinds and impose one or more of the following penalties: fines not exceeding \$2,000 or imprisonment for any term not exceeding 90 days, or a period of community service not exceeding 90 days for the violation thereof; prescribe that for the violation of particular ordinances at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding \$100; prescribe that for the violation of an ordinance pertaining to unlawful solid waste disposal at least a minimum penalty shall be imposed which shall consist of a fine which may be fixed at an amount not exceeding \$2,500 or a maximum penalty by a fine not exceeding \$10,000; to construct, acquire, operate or maintain any and all public improvements, projects or enterprises for any public purpose, subject to referendum requirements otherwise imposed by law, and to exercise all powers of local government in such manner as its governing body may determine;
- (c) Sue and be sued, to have a corporate seal, to contract and be contracted with, to buy, sell, lease, hold and dispose of real and personal property, to appropriate and expend moneys, and to adopt, amend and repeal such ordinances and resolutions as may be required for the good government thereof;
- (d) Exercise powers of condemnation, borrowing and taxation in the manner provided by general law. . . .

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#### HOME RULE STRUCTURE, INCLUDING LACK OF IMMUNITY FROM STATE PREEMPTION

The New Jersey constitution abrogates Dillon’s Rule for local governments, but it does not in and of itself grant home rule powers to localities. The state legislature has done so through a handful of important statutes that now reside in chapter 40 of the New Jersey Statutes Annotated.<sup>1</sup> The Home Rule Act, passed in 1917, codifies the basic powers available to all New Jersey municipalities. The Optional Municipal Charter Law, also known as the Faulkner Act,

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<sup>1</sup> Kenneth E. Vanlandingham, *Municipal Home Rule in the United States*, 10 WM. & MARY L. REV. 269, 274-75 (1968) (noting that the New Jersey Constitution “contains no home rule provision as such”).

originally passed in 1950 and amended in 1981, clarifies the forms of government available to municipalities while re-affirming their powers under the Home Rule Act.

Courts frequently cite language evocative of Dillon’s Rule in noting municipalities’ dependence on statutory grants for authority,<sup>2</sup> but at the same time recognize that the state constitutional and statutory scheme enjoin courts to construe such grants liberally.<sup>3</sup> As a statutory home rule state, however, New Jersey does not constitutionally protect cities from preemption.<sup>4</sup> Hence, courts may hold that an ordinance that conflicts with state law or that contradicts the policy of the legislature is preempted.<sup>5</sup> A valid state statute or regulation may expressly or impliedly occupy an entire field of regulation so as to preempt even non-conflicting municipal regulations of the same general subject.<sup>6</sup> Moreover, the New Jersey Constitution includes a limitation that attached to every ordinance is an implied condition that such ordinance must yield to the predominant power of the State.<sup>7</sup> The New Jersey Supreme Court most famously invoked this doctrine in the *Mt. Laurel* decision when holding that a municipality’s zoning authority, as a delegation of the state’s police power, must be exercised with the welfare of the entire state in mind.<sup>8</sup>

Although the state constitution does not protect home rule, it does provide a form of “negative home rule” insofar as the legislature may enact local laws only with the consent of the targeted municipality.<sup>9</sup>

State law provides a variety of options for organizing counties, but county authority in New Jersey is more limited than that for municipalities.<sup>10</sup>

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<sup>2</sup> *E.g.*, *City of East Orange v. Board of Water Comm'rs of City of East Orange*, 180 A.2d 185, 194 (N.J. 1962) (“A municipal corporation, being a creature of the Legislature, can exercise only those powers granted to it by the Legislature in express terms, by necessary and fair implication, or such as are incidental to powers expressly conferred.”)

<sup>3</sup> *E.g.*, *id.* (“[M]unicipal powers should be construed liberally . . . .”); *see also* *Whelan v. N.J. Power & Light Co.*, 212 A.2d 136, 143 (N.J. 1965) (“We are enjoined by the Constitution . . . the Home Rule Act, . . . and the Optional Municipal Charter Law which applies to the City, . . . to interpret statutes liberally in favor of the existence of local power to deal with local needs.”).

<sup>4</sup> *West Point Island Civic Ass'n v. Twp. Comm'n of Dover Twp.*, 255 A.2d 237, 240 (N.J. 1969) (“Every municipal power is the product of a statutory grant.”).

<sup>5</sup> *Overlook Terrace Mgmt. Corp. v. Rent Control Bd.*, 366 A.2d 321 (1976).

<sup>6</sup> *Trailways, Inc. v. City of Atlantic City*, 431 A.2d 191, 195 (N.J. 1980).

<sup>7</sup> *Ringlieb v. Parsippany-Troy Hills Twp.*, 283 A.2d 97, 99 (N.J. 1971).

<sup>8</sup> *S. Burlington Cty. NAACP v. Twp. of Mt. Laurel*, 336 A.2d 713, 726 (N.J. 1975) (“[T]he zoning power is a police power of the state . . . [s]o, when regulation does have a substantial external impact, the welfare of the state's citizens beyond the borders of the particular municipality cannot be disregarded and must be recognized and served.”).

<sup>9</sup> *Vanlandingham*, *supra* note 1, at 274.

<sup>10</sup> *See* N.J. STAT. ANN. § 40:41A-27 (2017) (describing county powers).