

# WASHINGTON

## CONSTITUTIONAL AND STATUTORY PROVISIONS

### Washington Constitution

- WASH. CONST. art. XI, § 4. County Government and Township Organization.

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Any county may frame a "Home Rule" charter for its own government subject to the Constitution and laws of this state . . . \* \* \* \* Such proposed charter shall be submitted to the qualified electors of said county, and if a majority of such qualified electors voting thereon ratify the same, it shall become the charter of said county and shall become the organic law thereof, and supersede any existing charter, including amendments thereto, or any existing form of county government, and all special laws inconsistent with such charter.

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After the adoption of such charter, such county shall continue to have all the rights, powers, privileges and benefits then possessed or thereafter conferred by general law. All the powers, authority and duties granted to and imposed on county officers by general law, except the prosecuting attorney, the county superintendent of schools, the judges of the superior court and the justices of the peace, shall be vested in the legislative authority of the county unless expressly vested in specific officers by the charter. The legislative authority may by resolution delegate any of its executive or administrative powers, authority or duties not expressly vested in specific officers by the charter, to any county officer or officers or county employee or employees.

The provisions of sections 5, 6, 7, and the first sentence of section 8 of this Article as amended shall not apply to counties in which the government has been established by charter adopted under the provisions hereof. The authority conferred on the board of county commissioners by Section 15 of Article II as amended, shall be exercised by the legislative authority of the county.

- WASH. CONST. art. XI, § 10. Incorporation of Municipalities.

Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization and classification in proportion to population, of cities and towns, which laws may be altered, amended or repealed. Cities and towns heretofore organized, or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election, shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution shall be subject to and controlled by general laws. Any city containing a population of ten thousand inhabitants, or more, shall be permitted to frame a charter for its own government, consistent with and subject to the Constitution and laws of this state . . . .

- WASH. CONST. art. XI, § 11. Police and Sanitary Regulations.

Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

### Washington Statutes

- WASH. CODE ANN. § 35A.01.010. Purpose and policy.

[T]o confer upon two optional classes of cities created hereby the broadest powers of local self-government consistent with the Constitution of this state.

- *Id.* § 35A.11.020. Powers vested in legislative bodies of noncharter and charter code cities.

The legislative body of each code city shall all powers possible for a city or town to have under the Constitution of this state, and not specifically denied . . . any authority ever given to any class of municipality or to all municipalities of this state.

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

The Washington constitution allows home rule for both cities and counties. Cities with more than 10,000 residents may adopt a home-rule charter, and ten cities have done so.<sup>1</sup> Most other cities (192) have converted to “code city status,” which allows them to exercise “sweeping powers” and is designed to free them from Dillon’s Rule.<sup>2</sup> Seven counties have adopted home rule pursuant to the Washington constitution.<sup>3</sup> The primary benefit of adopting home rule as a county appears to be increased structural autonomy regarding county officers and elections.<sup>4</sup>

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<sup>1</sup> *Washington City and Town Profiles*, Mun. Research & Services Center, <http://www.mrsc.org/cityprofiles/citylist.aspx> (listing first-class charter cities as Aberdeen, Bellingham, Bremerton, Everett, Richland, Seattle, Spokane, Tacoma, Vancouver, and Yakima).

<sup>2</sup> *Id.* (listing “code cities”); see also Hugh Spitzer, “Home Rule” vs. “Dillon’s Rule” for Washington Cities, 38 SEATTLE U. L. REV. 809, 842 (2015) (“While less than a constitutional amendment to bolster and entrench home rule powers, the Optional Municipal Code gave sweeping powers to small and medium-sized cities, almost all of which have since converted to code city status.”).

<sup>3</sup> These counties include Clallam, Clark, King, Pierce, San Juan, Snohomish, and Whatcom. *County Forms of Government*, Mun. Research & Services Center, <http://mrsc.org/Home/Explore-Topics/Governance/Forms-of-Government-and-Organization/County-Forms-of-Government.aspx>.

<sup>4</sup> *Id.*; e.g., *Henry v. Thorne*, 602 P.2d 354 (Wash. 1979) (allowing home-rule county to impose stricter requirements on timing of elections to fill vacancies than state constitution or general laws); *State ex rel. Carroll v. King Cty.*, 474

The constitution expressly gives all cities broad police powers, as long as local acts are “not in conflict with general laws.”<sup>5</sup> It also allows for flexibility in local government structure, although the structure must be consistent with general laws.<sup>6</sup> State law also gives non-home-rule cities that seek it – “code cities” – significant authority after the legislature expressed its intent to abandon Dillon’s Rule with respect to these cities.<sup>7</sup> Code cities have less autonomy than home-rule cities with respect to their structure, which is determined by state law.<sup>8</sup>

Despite the constitutional and statutory provisions, the state supreme court has fluctuated between recognizing cities’ robust authority and citing Dillon’s Rule in construing their authority narrowly.<sup>9</sup> For example, a 1980 decision upheld the code city of Issaquah’s authority to operate a municipal television system despite no express grant from the legislature.<sup>10</sup> Three years later, by contrast, the court ruled that because the legislature had not explicitly granted a group of cities authority, they could not agree in advance to make unconditional payments for electrical power capacity in anticipation of the construction of nuclear power plants.<sup>11</sup> The court concluded that when the state has shared or paramount interest in a subject matter area, localities must have express authority from the legislature to act.<sup>12</sup> While the power plant case is unusual insofar as the application of Dillon’s Rule was beneficial to cities by letting them off the hook for an *ultra vires* act, Professor Hugh Spitzer traces how the strain of Dillon’s Rule in that and earlier decisions continues to pop up in subsequent state supreme court decisions constraining local authority.<sup>13</sup> In more recent cases, the Washington Supreme Court has, for instance, invalidated a charter city-owned utility’s attempt to make payments to defray its greenhouse gas emissions and a code city’s attempt to impose a moratorium on shoreline development.<sup>14</sup>

Professor Spitzer hypothesizes that the Washington courts bounce back and forth between home rule and Dillon’s Rule in part because Washington still applies the latter to special districts.<sup>15</sup> Hence, the rule “lives on in judicial discourse,” and seeps into decisions involving municipalities to which it should not apply.<sup>16</sup>

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P.2d 877 (Wash. 1970) (home-rule county may hold elections in odd years).

<sup>5</sup> WASH. CONST. art. XI § 11.

<sup>6</sup> WASH. CONST. art. XI § 10.

<sup>7</sup> Municipal Code Comm., A Review of the Objectives of the Municipal Code (expressing intent of the Optional Municipal Code, WASH. REV. CODE § 35A).

<sup>8</sup> Spitzer, *supra* note 2, at 856.

<sup>9</sup> *See id.* at 843 tbl. (comparing Washington Supreme Court “home rule opinions” and “Dillon’s Rule opinions” from 1958 to 2011).

<sup>10</sup> *City of Issaquah v. Teleprompter Corp.*, 611 P.2d 741 (Wash. 1980).

<sup>11</sup> *Chem. Bank v. Wash. Pub. Power Supply Sys.*, 666 P.2d 239 (Wash. 1983).

<sup>12</sup> *Id.*

<sup>13</sup> Spitzer, *supra* note 2, at 848-55.

<sup>14</sup> *Id.* at 854 (citing *Okeson v. City of Seattle*, 150 P.3d 556 (Wash. 2007) (greenhouse gas), and *Biggers v. Bainbridge Island*, 169 P.3d 14 (Wash. 2007) (shoreline moratorium)).

<sup>15</sup> Spitzer, *supra* note 2, at 858-59.

<sup>16</sup> *Id.* Spitzer also cites judges’ customary use of common law as making them “prone to bend or altogether ignore

Even if and when state courts give full effect to home rule, it is clear that all Washington cities and counties exercise their authority subject to the possibility of preemption by the state through “general law.” A “general law” is “one which applies to all persons or things of a class.”<sup>17</sup> A law can be general “even though such class consists of but one person or thing,” as long as the classification has a rational relationship to the subject matter of the legislation.<sup>18</sup>

A local ordinance must yield to a state statute “if the statute preempts the field, leaving no room for concurrent jurisdiction, or if a conflict exists between the two that cannot be harmonized.”<sup>19</sup> Thus, a municipal ordinance is invalid if (1) a general statute preempts city regulation of the subject or (2) the ordinance directly conflicts with a statute.<sup>20</sup> Like a handful of other states, Washington refers to conflict preemption as a separate category of jurisprudence, and refers to field preemption as just “preemption.”

When assessing conflict, Washington courts will invalidate an ordinance “if it forbids that which the statute permits,”<sup>21</sup> or if the ordinance and the statute can be harmonized.<sup>22</sup> Preemption occurs when the legislature has expressly or by implication stated its intention to preempt the field.<sup>23</sup> When the legislature has expressly stated its intent to preempt the field, a city may not enact any ordinances affecting the given field. If the legislature is silent regarding its intent, the court must consider both the purposes of the statute and the facts and circumstances upon which the statute was intended to operate in order to determine the intent of the legislature.<sup>24</sup>

The state supreme court has noted that home-rule county control of elections is specifically exempt from a separate constitutional provision imposing uniform standards on elections.<sup>25</sup> It is unclear, however, whether the state legislature may preempt home-rule counties with respect to elections if it does so expressly.<sup>26</sup>

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statutory law.” *Id.* at 859.

<sup>17</sup> *Y.M.C.A. of Seattle v Parish*, 154 P. 85 (Wash. 1916).

<sup>18</sup> *State v. Derbyshire*, 140 P. 540, 543 (Wash. 1916).

<sup>19</sup> *State v. Fisher*, 130 P.3d 382 (Wash.App. Div. 1 2006); *see Luvene*, 827 P.2d at 1378 (citing *Brown v. City of Yakima*, 807 P.3d 353, 354 (Wash. 1991)).

<sup>20</sup> *Heinsma v. City of Vancouver*, 29 P.3d 709, 712 (Wash. 2001).

<sup>21</sup> *City of Bellingham v. Schampera*, 356 P.2d 292, 296 (Wash. 1960) (quoting *Village of Struthers v. Sokol*, 140 N.E. 519 (Ohio 1923)).

<sup>22</sup> *Heinsma*, 29 P.3d at 713.

<sup>23</sup> *Kennedy v. Seattle*, 617 P.2d 713, 718 (Wash. 1980); *Heinsma*, 29 P.3d at 712.

<sup>24</sup> *Lenci v. Seattle*, 388 P.2d 926, 930 (Wash. 1964); *Heinsma*, 29 P.3d at 712.

<sup>25</sup> *E.g.*, *Henry v. Thorne*, 602 P.2d 354, 355 (Wash. 1979) (“The amendment expressly provides that any county adopting a home rule charter is exempt from the uniform election provisions of article 11, section 5 (amendment 57).”).

<sup>26</sup> *Id.* at 881 (“[C]ounty home rule expressed the intent of the people of this state to have ‘the right to conduct their purely local affairs without supervision by the state, so long as they abided by the provisions of the constitution and did not run counter to considerations of public policy of broad concern, expressed in general laws.’”) (citation omitted).