

# MAINE

## CONSTITUTIONAL AND STATUTORY PROVISIONS

### Maine Constitution

- ME. CONST. art. VIII, Part 2, § 1. Power of municipalities to amend their charters.

The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character. The Legislature shall prescribe the procedure by which the municipality may so act.

### Maine Statutes

- ME. STAT. tit. 30-A, § 3001 (2017). Ordinance power.

Any municipality, by the adoption, amendment or repeal of ordinances or bylaws, may exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution of Maine, general law or charter.

1. Liberal construction. This section, being necessary for the welfare of the municipalities and their inhabitants, shall be liberally construed to effect its purposes.
2. Presumption of authority. There is a rebuttable presumption that any ordinance enacted under this section is a valid exercise of a municipality's home rule authority.
3. Standard of preemption. The Legislature shall not be held to have implicitly denied any power granted to municipalities under this section unless the municipal ordinance in question would frustrate the purpose of any state law.
4. Penalties accrue to municipality. All penalties established by ordinance shall be recovered on complaint to the use of the municipality.

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## HOME RULE STRUCTURE

Municipalities – towns and cities – have broad powers of legislation and administration of their affairs under the state constitution, provided there exists no express or implied prohibition by the constitution or the general law.<sup>1</sup> A municipality in Maine may exercise “any power or function which the legislature has power to confer upon it, which is not denied either expressly or by clear implication.”<sup>2</sup> Further, the Maine Supreme Court has held that the home rule statute constitutes an independent and plenary grant of power to municipalities to legislate on matters beyond those

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<sup>1</sup> City of Bangor v. Diva's, Inc., 830 A.2d 898, 905 (Me. 2003) (citing Bird v. Town of Old Orchard Beach, 426 A.2d 370, 372 (Me. 1981)).

<sup>2</sup> Ullis v. Inhabitants of Town of Boothbay Harbor, 459 A.2d 153, 159 (Me. 1983).

exclusively “local and municipal,” and that municipal power is not limited by the constitution's more narrowly worded home rule provision.<sup>3</sup> Hence, Maine municipalities essentially enjoy legislative home rule.

Maine is distinct in having a statute that directs the focus of its preemption analysis. It states that, “The Legislature shall not be held to have implicitly denied any power granted to municipalities under this section unless the municipal ordinance in question would frustrate the purpose of any state law.”<sup>4</sup> Municipal action will be viewed as preempted where application of the municipal ordinance prevents the efficient accomplishment of a defined state purpose.<sup>5</sup> This may occur where state law “create[s] a comprehensive and exclusive regulatory scheme” with which the local action interferes.<sup>6</sup> If the state occupies a field, the municipality may not regulate in the same area by purporting to regulate in a different, unoccupied field.<sup>7</sup>

#### POSSIBILITY OF IMMUNITY FROM STATE PREEMPTION

Although the constitutional and statutory provisions specifically mention “general law,” there is no case law analyzing whether a potentially preemptive law qualifies as sufficiently “general” to be valid. Interestingly, in a 1976 opinion, the Supreme Judicial Court of Maine noted in dicta the possibility “that municipal ordinances or charter provision[s] addressing exclusively local affairs may . . . supersede statutes of state-wide application.”<sup>8</sup> In that case, however, the court upheld “a uniform, state-wide system” for collective bargaining that applied to local personnel.<sup>9</sup> No subsequent cases have relied on that decision’s “localist” line of reasoning to protect municipalities from a state law’s application.<sup>10</sup>

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<sup>3</sup> *School Comm. of Town of York v. Town of York*, 626 A.2d 935, 939 (Me. 1993).

<sup>4</sup> ME. STAT. tit. 30-A, § 3001(3) (2017); *see also* *Sawyer Envtl. Recovery Facilities, Inc. v. Town of Hampden*, 760 A.2d 257, 263 (Me. 2000) (discussing statutory provision).

<sup>5</sup> *School Comm.*, 626 A.2d at 938-39 n. 8; 940-41 (citing Report of the Joint Standing Committee on Local and County Government on the Revision of Title 30 at 11 (Dec.1986)).

<sup>6</sup> *School Comm.*, 626 A.2d. at 941 (citing *Central Maine Power Co. v. Town of Lebanon*, 571 A.2d 1189, 1193 (Me. 1990)); *Sawyer Envtl.*, 760 A.2d at 257.

<sup>7</sup> *Ullis*, 459 A.2d at 160.

<sup>8</sup> *Lewiston Firefighters Ass’n, Local 785 v. City of Lewiston*, 354 A.2d 154, 162 (Me. 1976) (citing *Strode v. Sullivan*, 236 P.2d 48 (Ariz. 1951)).

<sup>9</sup> *Lewiston*, 354 A.2d at 162.

<sup>10</sup> *See also id.* (“We are also aware of the advantages of municipal autonomy which permits greater responsiveness to local needs.”).